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P R O C E E D I N G S

Volume 1 - Evidentiary Hearing

THE SECURITY OFFICER: All rise.

THE COURT: Good morning.

Please be seated.

THE SECURITY OFFICER: You may be seated.

We are here in the matter of Quintin Lee Alonzo versus
Rick Thaler.

This is civil action 3:07-CV-399-0.

We are here for purposes this morning of an evidentiary
hearing. If counsel would make their appearances for the
record.

MR. MEADOR: John Meador for respondent.

MS. KUYKENDALL: Leslie Kuykendall for respondent.

MR. BIGGS: William Biggs for petitioner.

MR. OGAN: And Sam Ogan for the petitioner also.

THE COURT: All right. Do we have any prehearing
matters to take up?

MR. MEADOR: Your Honor, I didn't know if we wanted
to try to swear in the witnesses first, before we did -- we
went on the record with any sort of testimony?

THE COURT: Well, then that's one of the things --
is the rule going to be invoked?

MR. BIGGS: We would like to invoke the rule, Your
Honor.

1 MR. MEADOR: Your Honor, we have two exceptions
2 that we would like to make an argument for, Carl Hays and
3 David Alex. Both of them are -- I mean, there's three
4 claims. The first two claims have to do with prosecutorial
5 misconduct and the third claim has to do with ineffective
6 assistance of counsel for failure to call -- call certain
7 witnesses.

8 We think they can be excluded from the rule to hear
9 testimony relevant to the third claim. David Alex could be
10 an expert or just otherwise give an opinion about the
11 reasonable -- the probability of -- of -- reasonable
12 probability of the outcome of the trial had these witnesses
13 testified.

14 The same with Carl Hays.

15 THE COURT: Are both of those prosecutors?

16 MR. MEADOR: David Alex is a prosecutor.

17 Mr. Hays is the defense attorney.

18 THE COURT: All right. Counsel.

19 MR. BIGGS: Your Honor, these are the key players
20 in this inquiry today and we would be opposed to excepting
21 either from the rule.

22 In terms of Carl Hays and some of the witnesses that
23 might be called, potentially exonerating witnesses, the State
24 is free to inform Carl Hays of what they claim occurred and
25 see how he would respond to that. He doesn't need to be in

1 here for the testimony of those witnesses.

2 And in terms of whether or not either of them can make a
3 legal determination as to the outcome of a trial, I -- I
4 would say that they -- their testimony is irrelevant on that
5 ground, because that's a legal determination that the court
6 should make in light of all the evidence before it and the
7 record. Whether or not they view a reasonable probability of
8 a different result seems irrelevant to me.

9 THE COURT: Have either of these witnesses been
10 designated as experts prior to --

11 MR. MEADOR: No, Your Honor.

12 THE COURT: -- right this minute?

13 All right. So Mr. Biggs has had no notice that you
14 intended to use them as experts?

15 MR. MEADOR: That's correct.

16 THE COURT: I'm going to go ahead and find that
17 they are subject to the rule.

18 If all of the witnesses would please stand, I'm going to
19 swear you in as a group and then ask that you step outside.
20 Are there any other witnesses outside?

21 MR. BIGGS: Yes, Your Honor. We have a few.

22 THE COURT: You can put your hand down. We'll wait
23 for all the witnesses.

24 MR. BIGGS: I would like to move to except Joe
25 Saal, our investigator, from the rule. I have spoken with

1 the respondent about that.

2 THE COURT: Is he going to be a witness?

3 MR. BIGGS: He will be, yes. To -- he was going to
4 testify to several open records requests he made with Dallas
5 County. His testimony is limited in that regard, but --

6 THE COURT: So it's -- it's not substantive
7 testimony, it's -- it's about the efforts that were made --
8 is it substantive testimony?

9 MR. BIGGS: I would actually say it is -- it is
10 substantive testimony, because since we are talking about
11 cause and prejudice at this hearing as well, it is
12 substantive, and leave it to the court.

13 THE COURT: All right. And you -- you're in
14 agreement?

15 MR. MEADOR: Yeah. Based on my understanding that
16 he was just going to testify to just I guess the records. If
17 it's going to be substantive we would request that he be
18 excluded as well.

19 MR. BIGGS: Your Honor, I'll withdraw the move.

20 THE COURT: All right. Are there any witnesses
21 that are not in the courtroom right now that either side
22 intends to call?

23 All right. If all of the witnesses would please raise
24 your right hands and be sworn.

25 (Witnesses sworn.)

1 THE COURT: All right. The rule has been invoked.
2 That means that each of you will be excluded from hearing the
3 testimony until you testify. You should not discuss the
4 matter with each other or with anyone. Your testimony should
5 not be discussed with anyone.

6 Are there any questions about that?

7 All right. Then I'm going to ask all of you to please
8 step outside and we will be calling you as you are needed.

9 Thank you.

10 MR. BIGGS: Your Honor --

11 THE COURT: Yes.

12 MR. BIGGS: -- two of our witnesses have not
13 arrived yet. One of our witnesses came to the courthouse and
14 did not bring her ID. She's coming -- it's my understanding
15 she's on her way, from the investigator.

16 And the other witness was not actually subpoenaed and
17 was in -- in Austin, and I do not know whether or not he's on
18 his way or not.

19 THE COURT: All right. Well, any -- please remind
20 me as to whether a witness has or hasn't been sworn and I'll
21 be sure that we swear them on the record and we'll ask each
22 one if they were sworn before the hearing.

23 All right. What are the matters that we needed to take
24 up?

25 MR. MEADOR: We talked about some stipulations, and

1 I think William has put them on paper and I think we were --
2 he was going to try to read them into the record and I had --
3 he's got a couple more stipulations than I had agreed to, or
4 I would have problems with, but I think -- is that right, did
5 you want to read them into the record?

6 MR. BIGGS: Yes, I would.

7 THE COURT: And let's only read the ones that Mr.
8 Meador has agreed to.

9 MR. BIGGS: Has agreed to?

10 THE COURT: Yes. Because it's not a stipulation
11 otherwise.

12 MR. BIGGS: Right.

13 All right. It's my understanding and respondent would
14 agree these are statements we both agree are misleading, the
15 legal significance of at least the prosecutor's closing
16 argument I think the respondent has a different view on that,
17 but I think he does agree that the statement itself is
18 misleading and that is -- that is the fourth statement I will
19 read to the court.

20 The first statement comes from trial volume 3, page
21 138 --

22 MR. MEADOR: Well, Your Honor, one second.

23 Did you want only the stipulations that we agreed to?

24 THE COURT: Yes.

25 MR. MEADOR: The only ones we technically agree to

1 are 2 and 3.

2 (Conferri ng)

3 MR. BIGGS: The 2nd and 3rd one?

4 MR. MEADOR: Yes.

5 MR. BIGGS: Your Honor, I apol ogi ze.

6 There's three statements we agree are misl eading, but
7 the legal signi ficance of the third statement, am I right, is
8 in dispute?

9 That is a closing statement by the prosecutor?

10 MR. MEADOR: Right.

11 MR. BIGGS: So the first statement that we agree is
12 misl eading is -- comes from trial volume 3, page 167, lines 9
13 through 13.

14 And Mr. Alex, the prosecutor, asks: "And as a result of
15 your investigation did you have any evidence that supports
16 that he --" and from the context of the record it's clear
17 that's Licho Escami lla, "-- shot easy (sic) Israel Martinez?"

18 Detective Berry responds: "No, none of the evidence we
19 collected indicates that Licho Escami lla was the one who shot
20 Santos Gauna, Israel Martinez or Cynthi a Martinez."

21 The second statement we both agree is misl eading, trial
22 volume 3, page 168, lines 22 through 25, Mr. Alex asks
23 Detective Berry: "And did anybody else -- and did anybody
24 exclude the defendant as being the person who killed Santos
25 Gauna or committed the aggravated assaults?"

1 Detective Berry responds: "No."

2 The third statement is --

3 MR. MEADOR: Your Honor, I think that's all we can
4 agree to. I mean, the last one is -- is closing argument,
5 and it's not within the parameters of the claim.

6 The claim was prosecutorial misconduct eliciting false
7 testimony, and we don't think the last -- the last excerpt
8 here goes to that claim. It only goes to prejudice and harm
9 as opposed to the other prongs of the -- of the analysis.

10 THE COURT: So there --

11 MR. MEADOR: Right. I mean, we didn't really agree
12 that that was part of the substantive prosecutorial
13 misconduct, the eliciting or failing to correct false
14 testimony, because it's not -- it's closing argument, it's
15 not evidence.

16 THE COURT: Okay. So there's no stipulation as to
17 that statement?

18 MR. MEADOR: No.

19 THE COURT: All right. Any other prehearing
20 matters that we need to take up?

21 MR. MEADOR: Not from respondent, Your Honor.

22 THE COURT: All right.

23 MR. BIGGS: Nothing from the petitioner, Your
24 Honor.

25 THE COURT: Would counsel like to make opening

1 statements or would you prefer to begin with the testimony?

2 MR. BIGGS: I would prefer to begin with the
3 testimony.

4 MR. MEADOR: Yes.

5 THE COURT: All right. And just for planning
6 purposes, do we have an estimate of how long we'll be here
7 today?

8 MR. BIGGS: I'm honestly not certain about that.

9 THE COURT: Will we finish today?

10 MR. BIGGS: I think we will finish today.

11 THE COURT: All right. Mr. Meador.

12 MR. MEADOR: That's my question to you.

13 Were you going to be in session tomorrow?

14 I believe we have some people that may have some
15 religious objections. That's maybe something we can look at
16 this afternoon.

17 THE COURT: Let's -- let's try, if we need to stay
18 a little later today, to avoid having to come back, let's do
19 that. But I'll ask you to move it along.

20 We'll take -- we'll take a few breaks, but not many.

21 All right. Mr. Biggs, you may call your first witness.

22 MR. BIGGS: Your Honor, we'll call Bill Cox to the
23 stand.

24 THE COURT: All right. All right. Mr. Cox, you
25 were part of the group that was sworn in; is that correct?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: All right. Please be seated, please.

3 DIRECT EXAMINATION

4 BY MR. BIGGS:

5 Q. Hi, Mr. Cox.

6 A. How are you?

7 Q. Have we spoken before on the phone?

8 A. We have.

9 Q. Have we ever met before?

10 A. No.

11 Q. Did you represent Mr. Alonzo on his state habeas
12 petition?

13 A. I did.

14 Q. Have you had a chance to review the petition you filed
15 in that case?

16 A. I did.

17 Q. And when did you file his petition?

18 A. Three or four years ago.

19 Q. Okay. Do you remember filing the petition?

20 A. I do remember filing it. I don't know the specifics,
21 because it's been a number of years, but I do -- I do
22 remember filing the writ -- writ.

23 Q. Who first contacted you about filing a writ on behalf of
24 Mr. Alonzo?

25 A. Someone in his family.

1 Q. Someone in his family.

2 And did they bring to you documents that you used in
3 support of your petition -- or as a basis to file a petition?

4 A. Yes.

5 Q. Do you --

6 A. I believe -- I believe they brought me Carl Hays' file.

7 Q. Did they bring you any other documents?

8 A. Transcripts maybe.

9 Q. Was there anything -- any court records that you
10 obtained that were not obtained through -- any -- you
11 obtained independently from the family?

12 A. I don't believe so. I believe I had all the records.

13 Q. And after you filed the petition did you keep any of
14 those records?

15 A. I believe they were turned back to the family.

16 Q. Do you have anything in your office that had been given
17 to you by the family in regards to this petition?

18 A. I might. We moved recently and we have a number of
19 boxes that are not in place, and I don't have -- couldn't
20 locate his file.

21 Q. Would -- would those be -- if you do have them would
22 those be copies of things?

23 A. They would be -- they would be -- I'm sure they would be
24 copies of things. I'm sure my secretary would copy something
25 before giving it back.

1 Q. And did you say you have -- you have had a chance to
2 review his petition recently?

3 A. Briefly. I glanced over it.

4 Q. Within the last couple of days?

5 A. Within the last couple of days.

6 Q. Mr. Cox, do you recall us having a conversation maybe
7 three or four months ago --

8 A. Yes.

9 Q. -- in regards to this petition?

10 A. Yes.

11 Q. And do you recall my faxing you a document?

12 A. Yes.

13 Q. I'm going to show it to you. It's actually
14 Defendant's -- it's Petitioner's Exhibit 1. The stickers say
15 Defendant's. I apologize for that, Your Honor.

16 I would like to show it to the witness, if I may
17 approach.

18 THE COURT: You may approach.

19 THE WITNESS: Yes.

20 MR. BIGGS: And, Your Honor, this exhibit is
21 Detective Berry's police report dated June 27, I believe,
22 2001, in which he recounts a conversation with Priscilla
23 Rodriguez where she identified Licho Escamilla as the person
24 who shot Santos Gauna. I think both parties stipulate to the
25 admissibility of that document.

1 MR. MEADOR: No objection.

2 MR. BIGGS: Move that it be admitted.

3 THE COURT: It is admitted.

4 BY MR. BIGGS:

5 Q. Did you have a chance to review that document?

6 A. I have.

7 Q. Do you recall ever seeing that document prior to filing
8 Mr. Alonzo's writ?

9 A. I do not.

10 Q. Do you -- do you not recall whether or not, or you --
11 you do not think you saw it?

12 A. I -- I don't think I saw it, because if I had seen it I
13 probably would have attached it to the writ, as an exhibit.

14 MR. BIGGS: I have no further questions of this
15 witness.

16 Pass the witness.

17 THE COURT: Any questions?

18 MR. MEADOR: Oh, Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MR. MEADOR:

21 Q. Hi, Mr. Cox. My name is John Meador.

22 Regarding that particular document, so you've never seen
23 that before, prior to filing it?

24 A. Filing a writ?

25 I don't believe so.

1 Q. Right. Okay. Now, you did attach a document to the
2 writ from Priscilla Rodriguez; is that correct?

3 Do you recall that?

4 A. I don't recall that, but if you say I did, I did.

5 MR. MEADOR: Your Honor, may I approach?

6 THE COURT: You may.

7 MR. MEADOR: Your Honor, by the way, we've provided
8 a notebook. I think you should have it. I'm going to be
9 looking at tab 11. Most of the documents in the notebook are
10 just record excerpts, they're not going to be exhibits per
11 se. I just wanted to sort of maybe have something that you
12 could reference.

13 THE COURT: Thank you.

14 BY MR. MEADOR:

15 Q. Again, I'm on tab 11.

16 A. Okay.

17 Q. Do you recall that?

18 A. Yes. Part of my writ, yes.

19 Q. That was part of your writ.

20 Okay. As far as -- have you had a chance to read it?

21 A. Not in several years.

22 Okay.

23 Q. You've had a chance to read Mr. Biggs' Exhibit 1?

24 A. Yes.

25 Q. Would you say that in substance the -- the exhibit that

1 I just had you read and that exhibit are nearly identical?

2 A. Yeah, they're pretty close.

3 Q. And in both of those statements -- or both those -- I
4 guess statements by Priscilla Rodriguez, doesn't she say that
5 she gave a police report to Detective -- or at least had
6 spoken to Detective Berry on June 27th, 2001?

7 A. She did.

8 Q. Is there a particular reason why you didn't attempt to
9 discover or obtain that police report at the time?

10 A. Well, I didn't know of the existence of it. And I guess
11 that affidavit -- I thought that affidavit was sufficient.

12 Q. Okay. Are you familiar with the claim -- the
13 prosecutorial misconduct claim, a claim that might be
14 something like failure to correct misleading testimony?

15 An Napue or Giglio claim?

16 Does that sound familiar?

17 A. No.

18 Q. Also in your writ you had indicated that you had -- had
19 obtained this affidavit, the one that I just showed you from
20 Carl Hays' file. Is that correct?

21 A. I'm sure, yes.

22 MR. MEADOR: Your Honor, I need to approach.

23 Sorry.

24 BY MR. MEADOR:

25 Q. Do you remember when the trial -- trial date was?

1 A. I think in early 2000s.

2 Q. 2003, February 2003, would that sound right?

3 A. I guess so.

4 Q. Okay. Can you point out the -- the date this was
5 signed, the affidavit?

6 A. February 11th, 2006.

7 Q. And the 6 is penciled in, right?

8 A. Yeah.

9 Q. Or penned in, it's definitely been altered?

10 A. Right.

11 Q. Is it your testimony then that you got this document out
12 of Carl Hays' file some three years after --

13 A. I had to have, yes.

14 Q. Okay. No other source?

15 A. No other source.

16 Q. Do you think Carl Hays would have continued to
17 investigate this case some three years after the murder trial
18 was over?

19 A. I don't think so.

20 THE COURT: Please speak up.

21 THE WITNESS: I don't think so.

22 THE COURT: Thank you.

23 BY MR. MEADOR:

24 Q. And you had mentioned when Mr. Biggs' was talking to you
25 that you don't use only the documents that you receive from

1 the family.

2 How did -- how were you sure that you had everything?

3 Were you just relying on what the family --

4 A. Yeah. I mean, it looked like it was all in order to me.

5 It came, it was, you know, from another lawyer. I assumed

6 that Mr. Hays would have all the files, since he was the

7 trial lawyer.

8 Q. Now, if you had other documents would you have attached

9 them to your writ?

10 A. Well, it depends on what other documents they are.

11 Q. Okay. At one point in your writ you had indicated

12 that -- that there was several witnesses that Mr. Hays failed

13 to -- to interview or bring into trial. Do you recall that?

14 A. I do recall that. Some witnesses that were intimidated,

15 I believe.

16 Q. In addition to other witnesses that could have -- that

17 were ready, willing, and able to -- sort of to testify.

18 Also at one point that you had said that you had

19 mentioned in your -- in the writ --

20 MR. MEADOR: And, Your Honor, this is, again, tab

21 11.

22 BY MR. MEADOR:

23 Q. Also contained in Mr. Hays' trial file was an assortment

24 of sworn affidavits. Their affidavits are attached to this

25 memorandum as Exhibit H.

1 If you had more than one would you have attached them to
2 exhibit -- in exhibit -- Exhibit H?

3 A. Probably.

4 Q. Okay. So if Exhibit H only had one affidavit, would
5 that have been the only one that you had?

6 A. That's correct.

7 Q. So when you used the word "affidavits" you were just
8 maybe using --

9 A. Right.

10 Q. -- the plural as opposed to the singular?

11 A. Right. Yes. Maybe a typo. I don't know.

12 MR. MEADOR: I'll pass the witness.

13 THE COURT: Any redirect?

14 MR. BIGGS: Nothing further -- further from this
15 witness, Your Honor.

16 THE COURT: All right. Can the witness be excused?

17 MR. BIGGS: Yes, Your Honor.

18 MR. MEADOR: Yes, ma'am.

19 THE COURT: All right. Thank you very much.

20 Mr. Cox, you are excused.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. BIGGS: Yes, Your Honor.

24 If we may approach and retrieve our exhibit.

25 THE COURT: You may.

1 MR. BIGGS: Your Honor, we'd like to call Carl Hays
2 to the stand.

3 THE COURT: And just to verify, Mr. Hays, you were
4 in the courtroom when all of the witnesses were sworn in

5 THE WITNESS: Yes, I was.

6 THE COURT: Thank you. Please speak up into the
7 microphone. You may proceed.

8 DIRECT EXAMINATION

9 BY MR. BIGGS:

10 Q. Good morning, Mr. Hays.

11 A. Good morning.

12 Q. Have we met before?

13 A. No, we have not.

14 Q. Have we spoken on the phone a few times?

15 A. Yes, we have.

16 Q. And have you met with the State in regards to this case?

17 A. I'm not sure I understand what you mean.

18 Q. Have you had any meetings with Mr. Meador or Ms.

19 Kuykendall in regards to this -- this case?

20 A. Yes, I have.

21 Q. So are -- would it be fair to say you're familiar with
22 the allegations that we're here before the court today?

23 A. Yes, I am.

24 Q. Mr. Hays, you represented Mr. Alonzo in his state trial
25 for murder and aggravated assault; is that correct?

1 A. That is correct.

2 Q. And have you spoken or seen Mr. Alonzo since that time?

3 A. No, I have not.

4 MR. BIGGS: Permission to approach, Your Honor.

5 THE COURT: You may.

6 BY MR. BIGGS:

7 Q. Mr. Hays, I'm showing you Petitioner's Exhibit 1, which,
8 am I right, that you've already reviewed this document
9 before?

10 A. Yes, I have.

11 Q. And in that document Priscilla Rodriguez -- Detective
12 Berry recounted a meeting with Priscilla Rodriguez where she
13 identifies Licho Escamilla as the shooter of Santos Gauna?

14 A. That's what the statement says, yes.

15 Q. And would you agree that the core -- the heart and soul
16 of the defense for Mr. Alonzo was mistaken identification?

17 A. Yes.

18 Q. And would you agree that the defense was calculated to
19 laying the blame at the feet of Licho Escamilla?

20 A. Actually, when we first took the case it was Frank
21 Hernandez, it was another person. And, yes, both of those
22 people were supposedly the shooter.

23 Q. But-- But at the trial itself we didn't -- you didn't
24 talk about Frank Hernandez, am I right?

25 A. No, we did not.

1 Q. Mainly relied on pinning it on Licho Escamilla?

2 A. That's correct.

3 Q. Do you ever recall seeing that document?

4 A. I cannot say one hundred percent sure whether I saw that
5 document or not. I don't remember seeing that document.

6 Q. Given the -- that Mr. Escamilla was the person that we
7 were -- Mr. Alonzo was trying to blame the murder on, don't
8 you think you would have remembered if you had come across a
9 document where someone else identifies Licho Escamilla as the
10 person who shot Santos Gauna?

11 A. No, I would not.

12 Q. You do not think you would -- that would not -- that
13 would not stick out in your mind?

14 A. No, it would not.

15 Q. Someone that -- evidence if true, if believed, would
16 completely exonerate Mr. Alonzo?

17 You would not have noticed that if you had come across
18 it?

19 A. It probably would not have stood out, because I had been
20 told that there were at least 20, 25 people, that would say
21 that Mr. Escamilla did the shooting, and when I talked with
22 those people they were not able to verify that.

23 So, no, that would not have stood out, because I had
24 talked to, as I said, at least 20, 25 people that told me the
25 exact same thing.

1 Q. You're saying you talked to 20 to 25 people that had
2 based their statement on rumors, is that -- is that a fair
3 statement?

4 A. No, not necessarily rumors. I had talked to at least 15
5 to 20 witnesses that told me that Licho Escamilla did the
6 shooting.

7 Q. But did any of those witnesses tell you that you -- that
8 they saw Licho Escamilla shoot Santos Gauna?

9 A. Some of them did, yes.

10 Q. And you just regarded those witnesses as not credible?

11 A. Their stories contradicted each other or either they
12 were not in the position based on the other evidence that was
13 available to be credible.

14 Q. But a statement to a detective identifying Mr. Escamilla
15 out of a photo lineup, I mean, you would agree that the --
16 that that did occur, would you not, based on that document?

17 A. According to the statement, yes.

18 Q. Wouldn't that have brought to your attention that
19 someone had actually picked Licho Escamilla out of a photo
20 lineup as the person who shot Santos Gauna?

21 A. What's your question?

22 Q. My question is: That would have -- coming across that
23 document, that would have been something that distinguished
24 that document from the testimony of other witnesses that said
25 they had maybe or seen or not seen Licho Escamilla shoot

1 Santos Gauna.

2 A. Not in my opinion, considering the number of people that
3 had told me the exact same thing.

4 Q. Do you think it's possible that you did not receive that
5 document?

6 A. That's possible.

7 Q. But -- and it's also possible that you did have the
8 document but didn't think twice about it?

9 A. That's also possible.

10 Q. You just don't -- you don't remember?

11 A. I don't remember seeing this document.

12 Q. And do you remember ever having a conversation with your
13 investigator about that document or about -- about Priscilla
14 Rodriguez identifying Licho Escamilla to a police detective?

15 A. I had a -- a conversation with the investigator about
16 Priscilla Rodriguez, as well as I did 15 to 20 other
17 witnesses that had stated they saw someone else do the
18 shooting other than Quintin Alonzo.

19 I don't recall specifically discussing this document
20 with him. I do know we did discuss Priscilla Rodriguez and
21 the fact that it was conveyed to us that she had made such a
22 statement.

23 Q. Well, you agree though during trial when Detective Berry
24 said on the stand -- perjured himself on the stand and said
25 no witness had identified Licho Escamilla as the person who

1 shot Santos Gauna, that that would be a false statement based
2 on that document?

3 A. It -- apparently.

4 Q. And that would be something that you would want to
5 object to, would it not?

6 A. Yes. Absolutely.

7 Q. The prosecutor -- at least the detective, committed
8 perjury?

9 MR. MEADOR: Your Honor, that calls for a legal
10 conclusion. That's not established.

11 THE COURT: Sustained.

12 BY MR. BIGGS:

13 Q. But said something on the stand that was affirmatively
14 false, that no one had identified Licho Escamilla as the
15 shooter, you agree that that would be something to object to?

16 A. If that were true, yes.

17 Q. If it were true -- if what were true?

18 A. If the officer knew at the time that he made that
19 statement, then yes.

20 Q. And if you had the document in your possession and you
21 were aware of it, that would -- that would be something you
22 could object to, his testifying that no one else had done
23 so?

24 A. Sure.

25 Q. And it could be something that you could impeach

1 Detective Berry on as well, am I correct?

2 A. That's true.

3 Q. In addition to objecting you could also have impeached
4 him with that?

5 A. That's true.

6 Q. And at closing argument that would be something that you
7 could have raised to the jury. Am I correct?

8 A. That's correct.

9 Q. And it would not only be a statement that completely
10 exonerates Mr. Alonzo, exculpatory evidence, but also
11 evidence that shows that Mr. Berry affirmatively lied on the
12 stand, am I right, that would be something that you could
13 mention at closing argument?

14 A. Your question said something about exoneration. I don't
15 think that standard alone would constitute exoneration.

16 Q. Would you agree though the statement would be more than
17 just exculpatory, that it would also suggest that the
18 prosecution had been -- had been affirmatively misleading the
19 jury?

20 A. If he were aware of the statement, yes.

21 Q. Well, if he were aware of what statement?

22 A. The Priscilla Rodriguez statement.

23 Q. But under either -- whether he was aware of it or not,
24 it's misleading to the jury since it did in fact happen, am I
25 right?

1 A. If the officer said he had not taken the statement, then
2 yes.

3 Q. Whether or not he's aware of it, it's false.

4 A. I can't say that, because I would have to go into the
5 mind of the officer. I don't know what he was thinking at
6 the time. I -- I know --

7 Q. But --

8 A. -- I specifically asked him that question and -- that's
9 just like if you ask me a question about something that
10 happened yesterday, I may not remember. I don't know. I
11 can't say. I can't speak for him.

12 MR. BIGGS: Your Honor, I --

13 BY MR. BIGGS:

14 Q. I mean, Mr. Hays, I'm not speaking in terms of his
15 awareness of the truthfulness of his statement.

16 I'm saying objectively it is a false statement that no
17 one else had identified Licho Escamilla as the shooter, that
18 one had identified Licho Escamilla, that is an objectively
19 false statement given that document. Is that right?

20 A. According to the document, yes.

21 Q. Whether or not he's aware of it, it's --

22 MR. MEADOR: Your Honor, this has been asked and
23 answered.

24 It's also leading.

25 THE COURT: It has been asked and answered.

1 BY MR. BIGGS:

2 Q. But, as -- as -- as I was indicating, do you agree
3 though at -- at closing argument --

4 MR. MEADOR: Object to leading.

5 MR. BIGGS: Your Honor, this whole proceeding is
6 about whether or not Mr. Hays was ineffective. Necessarily I
7 would say a hostile witness, someone that we're going to have
8 to -- to lead to explore any testimony at all.

9 THE COURT: Well, you haven't really demonstrated
10 that he's hostile to you yet, so let's -- the objection is
11 sustained.

12 BY MR. BIGGS:

13 Q. All right. Well, let me ask a more general question
14 then.

15 What could you have argued about that document to a jury
16 at sentencing -- I mean at closing argument?

17 A. That if in fact the officer was aware of it when he
18 testified that I could argue that he was not truthful.

19 Q. That he was not truthful?

20 A. That's if he was aware of that document when he answered
21 the question no.

22 Q. And if he wasn't aware of it, then what?

23 A. Then he wouldn't have been lying.

24 Q. And it would -- it would have been a true statement if
25 he was not aware of it?

1 A. I didn't say that.

2 Q. Okay. Well, what would be the significance of the
3 statement if he hadn't been aware of it to a jury when they
4 say that no one had identified anyone else?

5 Whether or not they're aware of it do you need to -- is
6 that something to -- to bring out at closing argument?

7 A. I'm not sure I understand your question.

8 Q. My question is: Does it really change the need to bring
9 out this testimony whether or not you can show that Detective
10 Berry was aware of this statement?

11 Does it change the false -- the falsity of the
12 statement?

13 A. No.

14 Q. How many witnesses did you call at trial that
15 eyewitnessed the shooting and said Licho Escamilla shot
16 Santos Gauna?

17 A. I don't recall.

18 Q. Do you remember calling any witnesses -- any witnesses
19 that identified Licho Escamilla as shooting Santos Gauna?

20 A. I don't recall.

21 Q. Would you -- would you disagree if I said that it was
22 zero?

23 A. No, I would not disagree.

24 Q. Do you recall making a pretrial motion -- an omnibus
25 pretrial motion where you basically requested all Brady

1 material or anything that could be exculpatory to Mr. Alonzo?

2 A. Yes, I do.

3 MR. BIGGS: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MR. BIGGS:

6 Q. Let me show you Petitioner's Exhibit 4.

7 A. Yes, sir.

8 Q. Does that appear to be the document you filed?

9 A. Yes.

10 MR. BIGGS: Your Honor, I would move for
11 Petitioner's Exhibit 4 to be admitted into evidence.

12 MR. MEADOR: No objection.

13 THE COURT: Petitioner's 4 is admitted.

14 BY MR. BIGGS:

15 Q. On that filing date does it say January 17th, 2003.

16 Maybe it's January 16th.

17 A. January 16th, 2003.

18 Q. And that was approximately two to three weeks before
19 trial. Is that -- is that right?

20 A. Yes, sir.

21 Q. When were you appointed -- or when were you retained for
22 this case?

23 A. It was pretty much a pro bono representation. I was not
24 paid, so . . .

25 I probably first met with Mr. Alonzo 2001, the summer of

1 2001.

2 Q. And do you think that it was a little late in the game
3 to be asking for Brady material? Just a few weeks before
4 trial?

5 A. No.

6 Q. After a year and a half of this percolating?

7 A. I pretty much had everything that the prosecutor gave me
8 prior to filing the motion.

9 Filing the motion was pretty much just a formality to
10 make sure that our -- those things that he had not given me
11 would be on record.

12 Q. So when did the first -- when did the prosecution turn
13 over any documents to you?

14 A. I can't say for sure, but the normal practice is shortly
15 after we notified the prosecutor that we were on the case.
16 That's the normal practice.

17 Q. Do you recall receiving those document in 2001?

18 If this case occurred in 2003 --

19 A. Normally we would receive those documents at the first
20 or second setting, so that probably would have been -- I
21 don't think this case was actually in court until 2002,
22 because there was a period of time that Mr. Alonzo was -- I
23 mean Mr. Alonzo was a fugitive. I don't recall exactly when
24 he was arrested. But I don't think we started doing any work
25 on the case until 2002.

1 Q. And do you recall when you received documents?

2 A. No.

3 Q. Do you recall what documents you received at that time?

4 A. I had received the probable cause affidavits, police
5 reports, and things of that nature.

6 Q. Did you receive -- at this time was Dallas County an
7 open file system?

8 Are you familiar with the open file policy?

9 A. Dallas County in my opinion is still not an open file
10 system.

11 Q. And what is your understanding of an open file policy?

12 A. Well, I do some practice in Tarrant County, where
13 everything that's -- the prosecutor has is available to the
14 defense. In Dallas County that's not the case.

15 Q. And what -- what does that include?

16 What kind of things would Dallas County not provide you?

17 A. It varies. It would depend on who the prosecutor is.

18 Some prosecutors will give you everything, some
19 prosecutors will not unless you actually file motions for
20 those things you need. Most prosecutors will.

21 Q. Among those prosecutors that don't provide you
22 everything, what kind of things would they not provide you?

23 A. Exculpatory evidence, witness list, things of that
24 nature.

25 Q. What kind of documents -- assume -- even after you filed

1 your pretrial motion, what kind of documents may a prosecutor
2 withhold from a defense attorney in a -- in a county that
3 does not have an open file policy?

4 A. I'm not aware of anything other than its work product.

5 Q. What about police reports?

6 A. No. I've always gotten police reports.

7 Q. You've always gotten every police report?

8 A. I can't say that, because I don't know.

9 In most cases I get the police report. I don't recall a
10 situation where there was a police report withheld.

11 Q. But are you -- are you relying -- I mean, you're not
12 independently obtaining police reports, are you?

13 A. Well, Dallas County has had for most of my career a
14 policy of putting the police report in the file, the probable
15 cause affidavit and the police report.

16 Q. And at the time was that the case in 2003, 2002, 2001?

17 A. Yes.

18 Q. And is it your understanding that contains every
19 document generated by the police department --

20 A. No.

21 Q. -- in regards to a case?

22 A. I can't say that.

23 Q. And -- and you're not -- do you obtain documents
24 independently of the prosecutor's office?

25 A. Yes.

1 Q. And I -- and I should be more specific: Police reports?

2 A. Yes.

3 Q. How else do you go about obtaining police reports?

4 A. They're generally in the court's file.

5 Q. In the court's file?

6 A. Yes, sir.

7 Q. Okay. Other than from the court or the prosecutor, is
8 there anywhere else you obtain police documents for cases?

9 A. There have been times when I would actually subpoena the
10 custodian of records for the police department.

11 Q. Would you have done that in around this time, 2001,
12 2002?

13 A. I don't recall.

14 Q. Is that something you do now?

15 A. It depends on the case.

16 Q. Would you have done that back then?

17 A. I don't recall.

18 Q. So you had obtained some documents prior to actually
19 filing the motion requesting Brady material?

20 A. That's correct.

21 Q. But you don't -- you do not remember when, am I correct
22 about that?

23 A. No, I don't.

24 Q. Do you remember --

25 A. It would probably have been early 2002.

1 Q. I'm sorry, I didn't mean to speak over you.

2 A. It probably would have been early 2002.

3 Q. And I think I might have asked you, but I can't -- I
4 can't recall you -- you answering.

5 What documents do you remember obtaining from the
6 prosecutor at that time, prior to filing this motion sometime
7 in 2002?

8 A. I believe I received the police report, some witness
9 statements. I don't recall exactly what all.

10 Q. Would you have received supplements to -- to police
11 reports?

12 A. I don't recall.

13 Q. Do you think -- would you agree that "police report" is
14 a pretty general statement?

15 A. Some are. Some are very specific.

16 Q. But it may not -- when you refer to a police report,
17 some may say a police report is sort of the -- the bare bones
18 of an -- of an investigation, while others would say it's
19 every document generated by the police department in regards
20 to a certain case.

21 Am I right about that?

22 That people would categorize police reports differently?

23 A. Correct.

24 MR. BIGGS: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. BIGGS:

2 Q. I'm going to show you Petitioner's Exhibit 2.

3 This is a document that I recently received from the
4 respondent, but I believe it's from the prosecutor's file,
5 noting things that were turned over to you on 1/16/2003.

6 Does that appear to be your signature?

7 A. It does appear to be my signature.

8 Q. And what -- what items are identified on there as having
9 been turned over to you?

10 A. You want me to read the whole list?

11 Q. Just on the first page.

12 A. Prosecution report.

13 Autopsy report.

14 P and S report.

15 Supplement 1 SWIFS report.

16 Ballistic report.

17 Report supplement number 4 SWIFS report.

18 Report supplement number 3 SWIFS report.

19 DNA.

20 DNA supplement.

21 Trace clothing.

22 And looks like housings (sic).

23 Q. Do you remember receiving those documents?

24 A. I remember receiving a package from the prosecutor.

25 Q. Do you remember -- do you remember receiving a package

1 from the prosecutor on that day, several weeks before trial?

2 A. I can't remember exactly what day it was, but I do know
3 he turned over a package to me.

4 Q. And those were -- but were those documents additional to
5 what you had received already?

6 A. I believe they were.

7 Q. Do you recall looking through each of those documents?

8 A. Not at the time that he gave them to me, no.

9 Q. When did you look through them?

10 A. Probably when I got back to the office.

11 Q. And did you give everything that was turned over to you
12 over to Mr. Rosa, your investigator?

13 A. Yes.

14 Q. Would he have had an opportunity to review everything in
15 your file?

16 A. Yes.

17 Q. Would he have had -- would he have had an opportunity to
18 review everything in your file throughout this -- preparing
19 for this case?

20 A. There were a number of meetings with Mr. Rosa and there
21 were a number of times he reviewed the file. He would make a
22 report, I would make his report a part of the file.

23 So, yes, he had an opportunity to review the file.

24 Q. When you spoke with Mr. Alex did he identify material as
25 potential Brady material or did he just give you the whole

1 pile of documents?

2 A. He gave me a package. We didn't discuss the package.
3 He just gave me a package.

4 As a matter of fact, I don't even remember whether he
5 was there or not. I think he left the package for me.

6 Q. Was it your understanding that that document was made in
7 response to your request for Brady material, et cetera, in
8 your omnibus trial motion?

9 A. I'm not sure.

10 Q. It wasn't -- but I believe you picked -- if that's
11 correct you picked that document -- those documents up the
12 day of you filed the motion.

13 A. I'm not sure. I don't -- I don't recall.

14 Q. But do you agree you did pick the documents up the day
15 after you filed the motion, according to those documents?

16 A. I'm not sure when I picked the documents up. I picked
17 the documents up, but I'm not sure what -- as to what date.

18 Q. But do you have any reason to believe that's wrong when
19 it says that you picked them up on 1/17/03?

20 A. No, I don't have any reason.

21 Q. Mr. Hays, I want to draw your attention to some
22 testimony, the transcript from the trial immediately before
23 the trial began. I believe it was after voir dire.

24 MR. BIGGS: If I may approach, Your Honor?

25 THE COURT: You may.

1 BY MR. BIGGS:

2 Q. Petitioner's Exhibit 5.

3 MR. BIGGS: Your Honor, I believe that the
4 respondent doesn't have any dispute of the authenticity of
5 the state transcripts. Am right?

6 MR. MEADOR: That's correct.

7 MR. BIGGS: Or the prosecution letter.

8 So I would move for Exhibits 2 and 5 to be admitted.

9 MR. MEADOR: No objection.

10 THE COURT: No objection.

11 2 and 5 are admitted.

12 BY MR. BIGGS:

13 Q. If you would take a moment just to move through those
14 few pages?

15 Mr. Hays, have you had a chance to review the
16 transcripts or do you need a few more minutes?

17 A. I'm still reading it. (Pause.)

18 Okay.

19 Q. And have you had a chance to review the transcript?

20 A. Yes, sir.

21 Q. And in the transcript, this is immediately prior to the
22 trial commencing, you state on the record that you've been --
23 you were promised by the State that I would be permitted to
24 review the detective's notebook, at this point I have not
25 reviewed that notebook.

1 What notebook is that in regards to?

2 A. I was concerned that there had been some notes made by
3 the detective that had not been turned over to us, so those
4 were the notes that I was -- I was referring to.

5 Q. What had been the basis for your concern?

6 A. I was just concerned that there may have been something
7 that we didn't have.

8 Q. Do you -- At the time -- this was immediately prior to
9 trial you say that you had not reviewed the notebook. Is
10 that right?

11 A. Not the officer's personal notes, no, I had not.

12 Q. This is Detective -- Detective Berry's notebook; is that
13 correct?

14 A. That's correct.

15 Q. Do you recall reviewing the notebook?

16 A. No, I do not.

17 Q. Do you know -- YOU don't know whether you ever reviewed
18 the notebook?

19 A. I don't remember.

20 Q. But it's possible you never actually took a look at the
21 notebook?

22 A. That's possible.

23 Q. And Mr. Alex states on the record that -- in reference
24 to the notebook that it has nothing to do -- this is on page
25 11, it has nothing to do with the exculpatory notion because

1 I believe everything that's exculpatory has been turned over
2 to counsel.

3 Was it your understanding that nothing in that notebook
4 would have -- could have been exculpatory?

5 A. I wouldn't know, unless I saw the notebook.

6 Q. But at the time of this proceeding were you -- were you
7 under the under -- impression that everything that was
8 exculpatory had been turned over to you?

9 A. That's what was represented to me.

10 Q. That was what was represented to you.

11 And did you believe that to be true?

12 A. I had no reason not to believe it to be true.

13 Q. And it was your understanding that nothing in that
14 notebook was exculpatory?

15 A. That's what was represented to me.

16 Q. And did you believe that?

17 A. I had no reason not to believe that at the time.

18 Q. Had they told you something was exculpatory in there, do
19 you think you would have taken a look at the notebook?

20 A. What was the question?

21 Q. Had they told you that something was exculpatory in the
22 notebook, would you have taken a look at the notebook?

23 A. Absolutely.

24 MR. BIGGS: May I have a moment, Your Honor?

25 THE COURT: You may.

1 BY MR. BIGGS:

2 Q. Mr. Hays, I'd now like to direct you to your trial file,
3 which you provided to me.

4 MR. BIGGS: If I may approach, Your Honor?

5 THE COURT: You may.

6 BY MR. BIGGS:

7 Q. I'm going to just go ahead and bring the whole binder up
8 here, since it's quite a few documents.

9 Did you bring your trial file with you today?

10 A. Yes, I did.

11 Q. Do you have it up there at the stand with you?

12 A. Yes.

13 Q. Okay. I'm going to show you the trial file you sent me
14 and let you take a look at it and confirm that the two
15 documents are the same, that everything in your file was
16 given to me.

17 So I'm --

18 MR. BIGGS: If I may approach, Your Honor?

19 THE COURT: You may.

20 BY MR. BIGGS:

21 Q. It's tab 9.

22 A. If you want me to do this, this is going to take a
23 considerable amount of time. There are a lot of documents in
24 there, so I don't know . . .

25 Q. Well, I'm just -- do you recall providing the same

1 documents to me, everything in your file?

2 A. Yes, sir.

3 Q. Provided to me?

4 A. Yes, sir.

5 Q. Do you want to just take a quick look just to confirm
6 that nothing has been altered in this -- this exhibit?

7 A. Again, that would take a considerable amount of time.

8 Q. Well, I'm going to need to --

9 A. If you tell me specifically what you're looking for --

10 Q. Well, you know, it's about admitting this document --

11 MR. BIGGS: Will you stipulate to the authenticity
12 of this trial file?

13 MR. MEADOR: Your Honor -- Which tab is it?

14 MR. BIGGS: This is tab 9.

15 MR. MEADOR: I think Mr. Hays' concern is -- I
16 don't know if -- are you asking him whether he wants to
17 compare it page by page?

18 THE COURT: I understand Mr. Hays' concern.
19 Can you be a little more specific?

20 MR. BIGGS: My concern is just authenticating the
21 document provided to me as being his trial file.

22 THE COURT: Are there specific documents within the
23 trial file that you want to ask him about?

24 MR. BIGGS: Eventually, yes.

25 THE COURT: Why don't we start with those.

1 MR. BIGGS: All right.

2 THE COURT: And maybe at a break you can have him
3 compare it.

4 BY MR. BIGGS:

5 Q. Mr. Hays, you do have your original file there; is that
6 correct?

7 A. Yes.

8 Q. Within that file do you have a document -- the document
9 we spoke of earlier where Detective Berry's report -- where
10 Priscilla Rodriguez identifies Licho Escamilla as being the
11 shooter?

12 Is that contained in your file?

13 A. No, it's not.

14 Q. It's not in your file.

15 You know that for a fact.

16 A. If it's in there, it was given to me afterwards.

17 It was not in there when I first was asked to give you a
18 copy of it.

19 Q. Okay. So it certainly wouldn't be in the copy you gave
20 to me?

21 A. If I did give you a copy, it was a copy that someone had
22 given to me after.

23 Q. Right. And you know for a fact that prior to this
24 proceeding you did not have that document in your file.

25 A. My file was given to Mr. Alonzo's mother to make copies

1 of. There's a number of documents that are missing, so I
2 can't say one hundred percent sure that that document was not
3 there. It was not there when I reviewed it for this hearing.

4 Q. Could you please recount the circumstances surrounding
5 Mrs. Alonzo obtaining a copy of your file?

6 A. What specifically are you asking?

7 Q. I'm asking: When did she contact you?

8 A. She made contact with me sometime probably in 2003.

9 And I explained to her that she needed to pay to have
10 the copies made.

11 She called back again and said that she didn't have to
12 pay to have the copies made.

13 I told her I was not charging her for the file, but I
14 did feel that I should be paid to make the copies.

15 She apparently contacted, I don't know if it was the
16 Attorney General's office or someone and said that I refused
17 to give her the file. That was not the case. I told her she
18 would have to pay for the copies. I had not been paid for
19 the representation. I most certainly wanted to get paid if I
20 was going to go out and make these copies.

21 So finally she -- there was -- there was a period of
22 time when I couldn't contact her, because I don't think she
23 had a phone, so I would call and leave messages for her, I
24 believe it was her father. And I finally left a message that
25 she could come over and copy the file.

1 Q. Where did she -- and did you -- did you give her the
2 file, the original file?

3 A. I don't recall if I personally gave her the file or my
4 office manager gave the file, but she did sign a statement
5 that she had received the file.

6 Q. Okay. And she didn't just receive a copy of the file?

7 A. I don't recall.

8 Q. Do you recall whether you had made copies or -- or
9 someone in your office had made copies for her of the file?

10 A. I don't recall. I was in trial at that time. I know
11 that I was not there, I don't think, when she came to pick up
12 the file. I -- I just don't recall.

13 Q. Do you know -- I mean, did she -- you don't know one way
14 or the other whether she took your original file for any
15 period of time?

16 A. I don't recall that.

17 Q. But is it possible that someone on your staff just made
18 copies of all the documents and that she picked those up?

19 A. That's a possibility.

20 Q. And you said that there are some files missing.

21 A. Yes, sir.

22 Q. What -- what documents do you know are missing from the
23 file?

24 A. I know that there were some medical reports that are
25 missing. There was some of the reports that was given to me

1 by my investigator that are missing. So I know those
2 documents are missing.

3 Q. And when did Ms. Alonzo -- Ms. -- I'm sorry, Ms. Vazquez
4 come pick up those documents?

5 A. According to my records she picked them up on April
6 21st, 2005.

7 Q. And had you taken a look at that file between the trial
8 and 2005?

9 A. No, I had not.

10 Q. When did you first take another look at this file to
11 determine that some documents were missing?

12 A. Probably when you made a request for it.

13 Q. And when I made a request did I offer to come and take
14 the file and make copies for you?

15 A. Yes, you did.

16 Q. And did you decide instead to just make copies of the
17 file and send them to me?

18 A. I had a staff member do that, yes.

19 Q. What conversations do you remember having with your
20 investigator about Priscilla Rodriguez?

21 A. We had several meetings. Prior to my having an
22 investigator appointed to this case I had several meetings
23 with Mrs. Vazquez, Mr. Alonzo's mother, and at each meeting
24 she promised she would have a number of witnesses there that
25 would exonerate her son. No witnesses ever showed up. We

1 had several meetings.

2 We finally went to the point of actually opening the
3 office on weekends, because she thought maybe if I was
4 available on weekends she could get the witnesses there. No
5 witness showed up.

6 So we got the court to appoint an investigator. The
7 investigator went out with her on several occasions to locate
8 witnesses.

9 He came back with a list of witnesses, one being
10 Priscilla Rodriguez. And he indicated to me that he could
11 not locate her, because I believe she was living with her
12 grandmother at the time. The grandmother was not very
13 cooperative, wouldn't give him any information on her.

14 But he was able to through his investigation find out
15 that she was incarcerated in Galveston, Texas. So I believe
16 after she was released he went back again to try to locate
17 her and was never able to locate her.

18 He gave me the number to the grandmother's home. I did
19 call the grandmother. I believe her name was Rosa Rodriguez.
20 Ms. Rodriguez indicated to me that she didn't know where the
21 grandmother was. She did not want me calling there anymore.
22 She did not want her granddaughter to have anything to do
23 with Mr. Alonzo because he was bad news.

24 Q. Were you -- is it fair to say that you were relying on
25 Mr. Rosa to find Ms. Rodriguez?

1 A. Not totally, because once I discovered that she was
2 incarcerated I obtained a subpoena and issued a subpoena to
3 have her present at his trial.

4 She was a juvenile at the time, so there's a special
5 procedure you have to go through. I had to subpoena the
6 director of the facility where she was located. And he
7 indicated to me that issuing a subpoena to her would
8 apparently not follow proper procedure, so I had to issue a
9 subpoena to him. We did issue that subpoena. He called me
10 back and said she was released the same day that he got the
11 subpoena.

12 So that's when we went back and relied on Mr. Alonzo --
13 I'm sorry -- Mr. Rosa to try to locate her.

14 Q. Okay. And what time period was that when she had been
15 released?

16 A. It was -- I'm -- I'm not sure.

17 I can look at the subpoena and tell you when the
18 subpoena was issued.

19 Her subpoena was issued on the 10th day of June, 2002.

20 Q. And at that time it was your understanding that she had
21 been incarcerated?

22 A. That is correct.

23 Q. And that was after a conversation with the warden; is
24 that correct?

25 A. That's correct.

1 Q. And he told you that a subpoena directly to her could
2 not issue; is that correct?

3 A. It was some special procedure, because she was a
4 juvenile that I had to go through some special procedure --
5 some special procedure to get her subpoenaed, so I should
6 subpoena according to his instructions.

7 Q. So you -- you did undertake the special procedure for
8 her?

9 A. Yes.

10 Q. And -- but you were not able to execute it because she
11 had left the day before you were going to serve it; is that
12 correct?

13 A. The day the subpoena arrived it's my understanding in
14 talking to the warden that she had been released.

15 Q. Now, was the only reason for a special procedure because
16 she was incarcerated in juvenile detention?

17 A. I believe the fact that she was a juvenile, yes.

18 Q. So did you after that proceed to issue a normal, regular
19 subpoena that you would to juveniles not incarcerated?

20 A. No, we did not, because we didn't know her location.
21 After she was released we were unable to find her.

22 Q. And is it your understanding that a criminal subpoena in
23 Texas is a statewide subpoena, there's no mileage
24 restrictions?

25 A. Yes.

1 Q. And no subpoena, you got -- you obtained no more
2 additional subpoena for Priscilla Rodriguez in the eight
3 months between when she was released and the trial; is that
4 correct?

5 A. We had no address on her.

6 Q. Is it required that you have an address in state court
7 for a subpoena to issue?

8 A. I think we would have to know -- I mean give some
9 directions as to where she is. I mean, I couldn't just issue
10 a subpoena without --

11 Q. Is it required under state law that an address be
12 provided for someone?

13 A. I don't know whether it is or not, but I doubt if you
14 would get a subpoena served if you didn't have an address.

15 Q. Can you subpoena someone from their last known address?

16 A. Absolutely, but it -- I did that and it came back,
17 unserved.

18 Q. Could you provided the address of the grandmother's
19 house where she had previously been living?

20 A. I could have, but in my opinion it would have been a
21 waste of time because she was not there. At least we were
22 told she was not there.

23 Q. Did Mr. -- did Mr. Rosa undertake any additional --
24 additional measures to find Priscilla Rodriguez subsequent to
25 her release from incarceration?

1 A. No. Once he reported to me that she was incarcerated,
2 then I -- I took over and issued the subpoena.

3 Q. And after you were not able to execute the subpoena,
4 were any additional steps taken to find her?

5 A. Yes. I believe Mr. Rosa went out several times trying
6 to find her. I made phone calls personally trying to locate
7 her.

8 Q. And this would have been prior to receiving the material
9 from the State after your omnibus pretrial motion; is that
10 right?

11 A. Yes.

12 Q. In the interregnum between then and June and January
13 '03, June '02 and January '03?

14 A. I'm sorry?

15 Q. In the interregnum between June '02 and January 2003 you
16 took additional steps to locate Ms. Rodriguez?

17 A. Yes, we did.

18 Q. And did you have any notion that she had identified a
19 witness to a detective -- she had identified Licho Escamilla
20 as the shooter to a police detective?

21 A. She was among the 20 or 30 other witnesses that I had
22 been told would say that, so she didn't stand out as any
23 particular -- for any particular reason, because we had been
24 given a list of, as I said earlier, at least 15 or 20 that
25 would say that someone else did the shooting. So her name

1 was, in my opinion, like the rest of 'em.

2 Q. Well, were the names -- were the other names people that
3 actually had personal -- that claimed to have personal
4 knowledge of the shooting?

5 A. Initially, yes.

6 Q. So among those 15 or 20 some said they actually saw it
7 and that Licho Escamilla shot --

8 A. They either saw him do the shooting or they saw Mr.
9 Alonzo at the time of the shooting.

10 Q. And some of -- and you're saying -- and your testimony
11 is that some of those witnesses said -- or you heard rumors
12 that they said they personally witnessed the shooting of
13 Santos Gauna?

14 A. Yes.

15 Q. And but for those witnesses -- do you recall which
16 witnesses that -- those are?

17 A. I was initially told that Ashley Martinez, Priscilla
18 Rodriguez, Francisco Perez, Lucy Montoya, Alex Tovar, Sandra
19 Tovar, Tony Garza, Joe Martinez, Juan Lucio, Antonio Garza,
20 Alex Torres, Edward Guzman.

21 Q. What list were you reading from there, Mr. Hays?

22 A. This was a list of witnesses that I had been told
23 initially that either saw who did the shooting or saw Mr.
24 Alonzo at the time of the shooting.

25 Q. And who was this list given to you?

1 A. I'm sorry?

2 Q. Who gave you this list?

3 A. Mrs. Vazquez.

4 Q. Mrs. Vazquez provided you those names?

5 A. Not necessarily. She didn't give me a list. These were
6 people we had discussed.

7 Q. Did any of those witnesses actually give a statement to
8 a police officer identifying Mr. Escamilla out of a photo
9 lineup?

10 A. No, I don't believe so.

11 Q. And it's your testimony that you can't remember whether
12 or not you received a document from a witness who identified
13 Mr. Escamilla out of a photo lineup to a police detective?

14 A. No, I cannot.

15 Q. You cannot recall whether or not you ever saw this
16 (indicating) document?

17 A. That is correct.

18 Q. And seeing -- seeing this document even now, this would
19 not make Priscilla Rodriguez stand out as a witness to you
20 from all the other witnesses?

21 A. For impeachment purposes, yes, but for the -- the
22 truthfulness of that statement, no.

23 Q. But do you have -- did you ever actually speak to
24 Priscilla Rodriguez?

25 A. No, I have never talked to Priscilla Rodriguez.

1 Q. So how were you able to determine that she wouldn't have
2 been credible?

3 A. Because of the other 20, 25 witnesses that I talked
4 to.

5 Q. But those people -- you agree those aren't the same
6 people as Priscilla Rodriguez?

7 A. I'm sorry?

8 Q. That's not the same person as Priscilla Rodriguez.

9 A. Her name was given with the other 20 or 25 people that I
10 did talk to.

11 Q. So you're assuming that because the other witnesses
12 didn't pan out that Priscilla Rodriguez wouldn't have panned
13 out either?

14 A. That's a fair assumption.

15 Q. I mean, what other basis would there be to conclude that
16 Priscilla Rodriguez did not have reliable information?

17 A. Well, we had spent a considerable amount of time talking
18 to witnesses that I was told saw something, after reviewing,
19 going through all those witnesses and then discovering they
20 really did not, throwing another name in the hat didn't
21 impress me.

22 Q. But that's based on having interviewed the other
23 witnesses?

24 A. Mainly, yes.

25 Q. There's no independent basis for that with regard to

1 Pri sci l l a Rodri guez?

2 A. No.

3 Q. And did you -- and you never actual ly spoke wi th
4 Pri sci l l a Rodri guez?

5 A. No.

6 Q. Did you ever speak to anyone in -- in Pri sci l l a
7 Rodri guez' s fami l y?

8 A. Yes, I di d.

9 Q. Who di d you speak wi th?

10 A. Rosa Rodri guez.

11 Q. And that is -- how is she related to Ms. Rodri guez?

12 A. She related to me that she was the grandmother.

13 Q. And what di d Ms. Rodri guez -- Rosa Rodri guez have to
14 say?

15 A. That she di d not know where Pri sci l l a was, she di d not
16 want me calling her house anymore because she di d not want
17 her granddaugther getting involved wi th Quinti n Al onzo
18 because he was bad news.

19 Q. And di d you speak wi th Pri sci l l a Rodri guez' s si ster,
20 Al ej andra Rodri guez?

21 A. No, I di d not.

22 Q. Do you know whether you ever instructed Investigator
23 Rosa to go speak wi th her?

24 A. No, I di d not.

25 Well, I et me take that back. I instructed him to talk

1 to any witness out there that he could find that knew
2 something about the case.

3 Ms. Vazquez was pretty much directing us to what
4 witnesses we should talk to.

5 Q. So were you -- were you relying on Ms. Vazquez to
6 provide you witnesses?

7 A. She was the main source, yes. She had a list of
8 witnesses that she wanted us to talk with, so . . .

9 But the investigator was instructed to locate any
10 witness that he could find that knew something about the
11 case.

12 Q. And do you have any idea what other measures he may have
13 taken, beyond Ms. Vazquez? Other sources?

14 A. Well, when he was initially appointed one of the first
15 things we did was we went up to the jail to talk to Mr.
16 Alonzo, so we had also talked with him about possible
17 witnesses.

18 The only witness that Mr. Alonzo gave me at the time was
19 Frank Hernandez. Of course, Frank Hernandez was
20 incarcerated, so I had to go through proper procedures to
21 talk with him. So initially the defense was going to be
22 based on Mr. Frank Hernandez.

23 Q. And you testified earlier that Ms. Vazquez fell behind
24 in her payments; is that true?

25 A. Fell behind?

1 She never paid.

2 Q. So you never received a single payment from her?

3 A. No. I received the initial down payment, but nothing
4 afterwards.

5 Q. How much that was?

6 A. \$1,000.

7 Q. And what was your agreement?

8 A. \$5,000.

9 Q. And was there any timetable within which that \$5,000 was
10 to be paid to you?

11 A. There was a contract.

12 Q. Do you have that contract?

13 A. No, I don't believe so. No.

14 Q. Go ahead. I'm sorry.

15 A. No, I do not.

16 Q. Okay.

17 MR. BIGGS: I will pass the witness.

18 THE COURT: I think this is a good time for a
19 morning break.

20 Let's take a ten minute -- and ten minute only recess,
21 and we will start back up.

22 THE SECURITY OFFICER: All rise.

23 (Recess taken at 10:25.)

24 (Proceedings resumed at 10:35.)

25 THE COURT: Mr. Meador, you may proceed.

CROSS EXAMINATION

BY MR. MEADOR:

Q. Picking up with Priscilla Rodriguez's credibility, do you recall in her affidavit -- well, you remember reading in her police report regarding her witnessing the shooting and whatnot?

A. Yes, I do.

Q. In your mind would her testimony contradicted any other witnesses that you had that night or at the time of trial?

A. Yes, it would have.

Q. Would that have affected her credibility?

A. Yes, it would.

Q. How would that have affected your case?

A. We had a number of witnesses that we interviewed. Each witness that we interviewed did what they could -- attempted to do what they could to help Mr. Alonzo, but the problem is each witness said he was either with them or they saw him and they put him in different places.

She would have put him in just a different place that would have contradicted what the other witnesses had said.

Q. Now, would her statement have put him sort of out front and in the middle of the fray?

A. Yes, it would have.

Q. What about her statement regarding him throwing bottles, how would that have affected?

1 A. That would have corroborated what one of the state
2 witnesses said.

3 One of the state witnesses had testified that the person
4 that was throwing the bottles was the person that did the
5 shooting.

6 Q. So would it have been your concern then that Priscilla
7 Rodriguez's testimony might have undercut testimony in which
8 people put Mr. Alonzo somewhere else on the property?

9 A. Yes. I most certainly think that her testimony put him
10 out front, would have corroborated the State's case.

11 Q. Would actually have helped the State's case?

12 A. I believe so.

13 Q. Getting back to when you first met with Mr. Alonzo, and
14 I think you mentioned that the defense was that you were
15 looking to tag either Licho Escamilla with the offense or
16 Frank Hernandez?

17 A. Yes.

18 Q. Did Mr. Alonzo indicate to you any -- what did he say to
19 you about Frank Hernandez?

20 A. He indicated that Frank Hernandez -- Frank Hernandez
21 could exonerate him, that he and Frank Hernandez had gone to
22 the party together, that the gun that Frank Hernandez was
23 using during the shooting was a gun that he had taken to the
24 party and it was the gun that he had given to Frank
25 Hernandez.

1 Q. So "he" being Quintin Alonzo --

2 A. That's correct.

3 Q. -- had given the gun to Frank Hernandez?

4 A. That's correct.

5 Q. Also there was some questions asked about the -- I guess
6 all the witnesses that could have come to trial on Mr.

7 Alonzo's behalf. Do you recall that?

8 A. Yes.

9 Q. Mr. Alonzo has alleged that a man by the name of Juan
10 Lucio would have -- could have attended the trial. Do you
11 recall whether he was sworn in, whether he attended the trial
12 or what his status was?

13 A. I know he was there at the beginning of the trial. When
14 we called him he had disappeared. I believe that he
15 disappeared.

16 Q. That he wasn't -- he was sworn in and then just up and
17 left or something to that affect?

18 A. That's correct.

19 Q. What about a man by the name of Francisco Perez?

20 A. Mr. Perez was also present I believe and for whatever
21 reason at the time of the trial he was not available.

22 Q. What affect on your -- your case would Mr. Perez's
23 testimony have been if, quoting Mr. Alonzo, Perez was willing
24 to say that he was -- he was with me behind the tree?

25 A. I think it would have probably caused the jury to have

1 the impression that most of the witnesses were trying to help
2 him but they were contradicting other witnesses.

3 One witness said he was with the DJ.

4 One witness said he was in the back.

5 One witness said he was behind the tree.

6 One witness said he was out front.

7 Each witness put him in a different location.

8 Q. So far as you can see he can't be in two or three or
9 four different places at once?

10 A. No.

11 Q. How would you have explained that?

12 How would you have explained that had that come out at
13 trial?

14 A. It would have been very difficult.

15 Q. What about witnesses who would have identified, for
16 example, a Hispanic male running to a Cadillac and shooting
17 basically from across the street or running backwards and
18 shooting, would that have exonerated Quintin Alonzo?

19 A. No. I think what it did, it gave a picture of more than
20 one shooter, but I don't think it had anything to do with
21 whether Mr. Alonzo was shooting or not.

22 Q. There was testimony at trial, wasn't there, that there
23 were multiple shooters?

24 A. That's correct.

25 Q. Li cho being probably one of them?

1 A. That's correct.

2 Q. Now, as far as you -- concerning the Brady material, the
3 exculpatory material, is it your understanding that the State
4 has an obligation to give you Brady material whether you ask
5 for it or not?

6 A. Yes.

7 Q. Do they then have to go and identify what's exculpatory
8 or what's not or -- when they hand over documents in regular
9 discovery do they have to pinpoint what's exculpatory, or do
10 you know whether --

11 A. No. No.

12 Q. So the -- so the pretrial motion was -- you had
13 mentioned and you said it was a formality.

14 A. That's correct.

15 Q. Was that just to get something in the record so at least
16 you made some attempt?

17 A. That is correct.

18 Q. Now, regarding police reports, isn't it true that the
19 law in Texas is that you don't -- the State does not have to
20 turn over police reports until the witness has testified?

21 A. That's correct.

22 Q. Have you ever had experience dealing with David Alex, in
23 particular, on other cases where he didn't turn over --

24 A. I've had many cases with Mr. Alex.

25 Q. Okay. Have you ever had an example of where he didn't

1 turn over material or --

2 A. I have not.

3 Q. Tell me, why did you hire John Rosa?

4 A. Two reasons.

5 One, I was overwhelmed with the number of witnesses that
6 my client and his mother kept bringing to me, that I was -- I
7 needed some help.

8 Number two, because some of the witnesses may have had a
9 problem speaking English, so I wanted someone that was
10 bilingual, so that's why Mr. Rosa -- as a matter of fact,
11 there was another bilingual investigator that turned down the
12 case because she didn't want to get involved because of the
13 gang activity involved in the investigation. So Mr. Rosa was
14 chosen because of that.

15 Q. What were your instructions to him?

16 A. Initially I wanted him to go up to the jail to meet with
17 Mr. Alonzo; then secondly, come by the office to pick up the
18 files, go over the files, and then meet with Ms. Vazquez and
19 then go out with her and locate as many witnesses as he could
20 that knew something about this case.

21 Q. Okay. So he was going to do some leg work for you --

22 A. Yes.

23 Q. So up to that point Mr. Alonzo's mother had told you
24 that she would be bringing witnesses to you?

25 A. Yes. There were a number of meetings where she was to

1 have ten or 12 witnesses in my office, and no one would ever
2 show up.

3 Q. So when they didn't show -- show up, that's when you
4 hired -- or felt like you needed to hire John Rosa?

5 A. That's correct.

6 Q. You indicated that you may have given Ms. Vazquez or Ms.
7 Vazquez, I think Julia Vazquez, Quintin's mother, your
8 original file. Is that possible?

9 A. That's possibly.

10 Q. Would that have been a mistake you think looking back?

11 A. Looking back, yes.

12 Q. So you think there were some documents when it came back
13 to you that were possibly missing?

14 A. It was in disarray. And, as I said, I'm not one hundred
15 percent sure whether Ms. Vazquez did that or whether a staff
16 member.

17 Q. Okay. Now, as far as locating Priscilla Rodriguez, you
18 indicated that you had issued a subpoena or attempted to
19 issue a subpoena for her?

20 A. That is correct.

21 MR. MEADOR: Your Honor, may I approach?

22 THE COURT: You may.

23 BY MR. MEADOR:

24 Q. Let me show you what I --

25 MR. MEADOR: This is a new exhibit for us.

1 Respondent's Exhibit 3, is that what you -- is that the
2 subpoena?

3 THE WITNESS: That's correct.

4 MR. MEADOR: We move it.

5 THE COURT: Any objection?

6 MR. BIGGS: No objection.

7 THE COURT: It is admitted.

8 BY MR. MEADOR:

9 Q. So you did attempt to issue some legal summons to get
10 her there?

11 A. We did everything possible to get Ms. Rodriguez to
12 trial.

13 Q. So as far as her particular address is concerned, would
14 a process server want to know an address for her?

15 A. Absolutely.

16 Q. Okay. And if it were to come back undelivered --

17 A. I have issued subpoenas with incorrect addresses. They
18 always come back. They will not issue a subpoena without an
19 address. I mean, they may issue it; you won't get a witness
20 there.

21 Q. Now, as far as you -- you mentioned that you had spoken
22 with grandma about --

23 A. Yes.

24 Q. -- was it your impression -- was it your impression that
25 Priscilla Rodriguez was a minor at the time?

1 A. Yes.

2 Q. Do you know whether you could have compelled her --
3 would -- would the grandmother have had some say in whether
4 she would have testified or not?

5 A. I think as the guardian, yes.

6 Q. But did the -- did you also mention the grandmother
7 didn't know where she was; is that correct?

8 A. Grandmother -- grandmother told me she did not know
9 where she was. She did not want me calling there anymore.
10 She did not want to have anything to do with this case.

11 Q. Also, you mentioned that you had entered into a contract
12 with Mr. Alonzo's mother; is that correct?

13 A. That's correct.

14 MR. MEADOR: Your Honor, may I approach again?

15 THE COURT: You may.

16 MR. MEADOR: This will be Respondent's Exhibit 4.
17 Again, this is new.

18 BY MR. MEADOR:

19 Q. Can you identify that for the record?

20 A. Yes, it is the contract.

21 Q. Is that the contract you were looking for and couldn't
22 find?

23 A. Yes.

24 MR. MEADOR: We would move to admit Respondent's 4.

25 MR. BIGGS: No objection.

1 THE COURT: Number 4 is admitted.

2 BY MR. MEADOR:

3 Q. Now, have you had occasion to see a -- didn't Mr. Rosa
4 write a memo to you sort of detailing his hours and
5 participation and whatnot in the --

6 A. Yes, he did.

7 Q. Do you recall whether or not in that memo he mentioned
8 that he actually interviewed Priscilla Rodriguez or not? Was
9 able to identify -- I mean -- excuse me -- locate her?

10 A. I believe -- I believe in the memo he listed a number of
11 witnesses -- he would give me a memo each day that he would
12 go out, and on one occasion he came back with a list of
13 witnesses that he had interviewed, and I believe he indicated
14 that Priscilla Rodriguez was one of those witnesses.

15 Q. You also mentioned that you were -- you were hired
16 initially possibly in July of 2001. Does that sound about
17 right?

18 A. I believe that's correct.

19 Q. Okay. And who did you deal with mostly at the time?

20 A. Ms. Vazquez.

21 Q. Okay. And did you ever meet with Mr. Alonzo?

22 A. Yes.

23 Q. Okay. Do you know at the time whether he was -- whether
24 there was a warrant for his -- his arrest at the time or not?

25 A. The initial meeting with Mr. Alonzo was when he was

1 still a fugitive. I met with him at an apartment complex.
2 And at that meeting I encouraged him to turn himself in,
3 so . . .

4 Q. And do you know if he did?

5 A. No, he did not.

6 MR. MEADOR: If I may have a moment, Your Honor.

7 THE COURT: You may.

8 BY MR. MEADOR:

9 Q. One last thing. How often did you meet with Ms.
10 Vazquez, do you recall?

11 A. Early on it was on a weekly basis, initially.

12 Then at some point I don't know if she -- I know there
13 were some problems going on. Her husband was incarcerated at
14 one point and he was released and he was re-incarcerated. I
15 believe she lost her home or had to move, because there were
16 times that I couldn't locate her, because I would make phone
17 calls and her -- I believe it was her father who would have
18 to go and find her. She would sometimes return the phone
19 calls, sometimes she would not.

20 But we met on a regular basis initially.

21 Q. And that was -- she was providing you witness
22 information?

23 A. She was providing witnesses and making appointments for
24 witnesses to show up.

25 MR. MEADOR: Your Honor, may I approach again?

1 THE COURT: You may.

2 BY MR. MEADOR:

3 Q. I'm going to refer to my tab 12.

4 Could you look that over, please?

5 Do you recognize that?

6 A. Yes, I do.

7 Q. Do you see a document there in which -- that might bear
8 your signature? Or your -- I'm sorry, your writing?

9 A. Yes. Yes.

10 Q. Can you describe that for the court?

11 A. Mr. Rosa went out and talked to a number of witnesses,
12 and he would make a summary of what those witnesses would
13 testify to. I reviewed each one of those witness statements
14 and I would rate them, whether they were good, fair, poor.

15 And on this particular statement I wrote this was a very
16 good witness. And this was one of the witnesses that we had
17 intended to call at the trial.

18 Q. Where you had indicated it said very good did you --
19 there -- was there any other notation on that?

20 A. Not here.

21 I made a note, when I got ready to call this witness he
22 was not available.

23 Q. Okay. Okay. So, again, that -- that is your
24 testimony -- I mean your handwriting?

25 A. That is correct.

1 MR. MEADOR: We'll pass the witness.

2 THE COURT: Any redirect?

3 MR. BIGGS: Just a brief, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. BIGGS:

6 Q. Mr. Hays, you testified that Mr. Lucio, Juan Lucio, was
7 unavailable; is that correct?

8 A. I'm not sure.

9 There were a couple of witnesses that were there, but
10 when it was time for them to testify they were not available,
11 and I believe he was one of the ones that was not there.

12 Q. But didn't -- didn't you just testify that the witness
13 you were being asked about was unavailable?

14 A. If I have on there that he was not available, then he
15 was not available.

16 Q. No, it -- there's no documentation of him being
17 unavailable.

18 This is the same witness, Mr. Lucio, you say had very
19 good testimony and you had intended to call at trial but he
20 was unavailable.

21 A. If I --

22 Q. Was he unavailable?

23 A. If I put not available he was not there when I called
24 him.

25 Q. There is no documentation of him being unavailable on

1 this document.

2 A. It's not a -- "not here" on that document.

3 Q. There's nothing on this document that says that Mr.
4 Lucio was unavailable. I'm asking if you are testifying that
5 he was unavailable?

6 A. I'm testifying that if I put "not here" that meant he
7 was not there when I called him.

8 MR. BIGGS: Your Honor, I object as nonresponsive.

9 THE COURT: Overruled.

10 BY MR. BIGGS:

11 Q. Do you -- do you know how he was unavailable?

12 A. During the course of the trial -- well, before the trial
13 started we had all of the witnesses there in the defense
14 witness room. I went down the list, called on the witnesses.

15 When I called that particular witness he was not there.

16 Q. Do you -- you went -- you went back to the witness room
17 and you asked for him and he was not there?

18 A. Right. Plus, I had the investigator back there with
19 them. I would go out and call the next witness, he was
20 nowhere to be found.

21 Q. So am I correct that you viewed this witness as a good
22 witness?

23 A. Well, he was -- he had some testimony that I thought
24 would be --

25 Q. And he was subpoenaed to testify?

1 A. I don't believe he was subpoenaed.

2 Q. He was not subpoenaed?

3 A. I don't believe any of the witnesses were subpoenaed.

4 Q. So you relied on them to come voluntarily?

5 A. All the witnesses indicated that they would be there.

6 If a witness tells me that they will be there, there doesn't
7 seem to be a problem with them showing up, I don't subpoena
8 them.

9 Q. Did you take Mr. -- did you take all of the witnesses
10 into court and have them sworn in?

11 A. I believe we did.

12 Q. So Mr. Lucio was sworn in?

13 A. I believe he was.

14 Q. When you went back to the jury room and found that he
15 was unavailable, did you come into court and make a record of
16 that, that he was unavailable?

17 A. I believe we called his name as the next witness and
18 then he was not there, so I don't recall whether any record
19 was made of that or not.

20 Q. Did you bring to the court's attention that he was not
21 available?

22 A. I'm sure if I called his name and he was not there, then
23 I'm sure it was brought to the court's attention. I
24 don't --

25 Q. Did you --

1 A. I know we didn't make a separate record on that, no.

2 Q. Did you move for a continuance in light of that fact?

3 A. No, we did not.

4 Q. Did you consider moving for a continuance?

5 A. No, we did not.

6 Q. You stated earlier that Priscilla Rodriguez, based on
7 her statement to the police, that she may have testified that
8 Mr. Alonzo was in the -- the front and not the back.

9 Did -- did you make an independent credibility
10 determination of Priscilla Rodriguez?

11 A. No. I never talked to Priscilla Rodriguez.

12 Q. Did you find -- did you believe that the witnesses you
13 did call were particularly credible?

14 A. No, I did not.

15 Q. And if you had interviewed Ms. Rodriguez and found her
16 to be credible, that might have changed the defense you
17 decided to present?

18 A. I'm sorry?

19 Q. If -- if you had interviewed Ms. Rodriguez and found her
20 to be more credible than any of the other witnesses, couldn't
21 that have influenced whether or not you decided to bring her
22 as a witness instead of the witnesses you did call?

23 A. The witnesses that I interviewed, I rated them as good,
24 poor, unacceptable witnesses.

25 I don't know, without having talked with her, whether I

1 would have or not.

2 Q. But -- and your testimony is you do not remember whether
3 you possessed that investigative report where Priscilla
4 Rodriguez informed a detective that Licho Escamilla had shot
5 Santos Gauna?

6 A. What was the question again?

7 Q. You cannot remember whether or not you saw that
8 document?

9 A. No, I cannot.

10 Q. And you believe it's possible that you never obtained
11 that document?

12 A. It's possible.

13 Q. And if you did obtain that document do you agree that
14 you accorded it no significance?

15 If -- in the event that you did receive that document,
16 given that you cannot remember it, would you agree that you
17 didn't accord it any particular significance?

18 A. I'm not sure I understand the question.

19 Q. Well, if you had received it -- you don't remember it,
20 correct?

21 A. That's correct.

22 Q. And if you had received it, and you found it to be
23 credible, or particularly probative, you probably would
24 remember it.

25 A. No, because, as I said -- as I said earlier, that

1 document was typical of all the other statements I had heard
2 from all the other witnesses that had been presented to me.

3 There was nothing that stood out about her statement.

4 Q. So regardless of whether you received it or did not,
5 would it be fair to say this document had no influence on the
6 way you investigated your case?

7 A. I wanted to talk with her, yes, because she was a
8 potential witness, but so far as it having any influence on
9 how I handled the case, no.

10 Q. Okay.

11 MR. BIGGS: No further questions, Your Honor.

12 THE COURT: Any recross?

13 MR. MEADOR: Yes, Your Honor.

14 One more thing, Your Honor.

15 RE CROSS EXAMINATION

16 BY MR. MEADOR:

17 Q. If you had a choice at trial, just sort of along those
18 lines, you had a witness who was going to say that he was
19 participating in the -- in the altercation out front and a
20 witness who was willing to say that he was with me in the
21 back or behind a tree or with a DJ or in the garage or
22 mingling, which would you have preferred?

23 A. I would most certainly would -- prefer someone who is
24 going to take him from where the crime took place.

25 MR. MEADOR: Thank you.

1 THE COURT: Is there any reason that Mr. Hays may
2 not be excused at this time?

3 MR. MEADOR: Your Honor, I believe he's on our
4 witness list and we do have some additional witnesses I think
5 they're going to call and he may be able to address some of
6 their testimony.

7 THE COURT: So you intend to re-call him?

8 MR. MEADOR: Yeah. I've got him in my case in
9 chief.

10 THE COURT: Well, can we go ahead and present his
11 testimony to minimize him having to come back?

12 I'm sure he's got other things to do.

13 MR. MEADOR: Well, I'm not sure what their
14 witnesses are going to say.

15 THE COURT: All right. Mr. Hays, I'm sorry. You
16 will have to go back to the witness room.

17 THE WITNESS: Okay.

18 THE COURT: You may call your next witness.

19 MR. BIGGS: Maybe he could perhaps be released on
20 standby, within a certain number of minutes from the
21 courthouse.

22 THE COURT: How far is your office?

23 THE WITNESS: 10 minutes.

24 THE COURT: When will we know if he needs to be
25 re-called?

1 MR. MEADOR: I'll have to see the order in which
2 you call your witnesses.

3 THE COURT: How many more witnesses do we have from
4 Mr. Alonzo?

5 MR. BIGGS: I'll have to count them.

6 THE COURT: More than five?

7 MR. BIGGS: Approximately five, probably.

8 THE COURT: Is there any objection to him going
9 back to his office?

10 MR. MEADOR: Re-call is fine with me, as long as
11 we've got some notice.

12 THE COURT: Okay. If you could just be close to a
13 telephone, Mr. Hays. Thank you.

14 Call your next witness.

15 MR. BIGGS: Yes, Your Honor.

16 We would like to call John Rosa to the stand.

17 THE COURT: All right.

18 MR. MEADOR: We want to make sure we have his
19 number.

20 THE COURT: While we're waiting for Mr. Rosa, do we
21 know which witnesses have any objection to coming back
22 tomorrow?

23 Maybe we could take those witnesses out of order, in
24 case we need to go on tomorrow?

25 MR. BIGGS: I have not looked into that, but I

1 will, Your Honor.

2 THE COURT: Okay. At -- during the lunch break,
3 Mr. Meador, if you would look into that as well.

4 All right. Mr. Rosa, if you would please step forward
5 to the witness stand.

6 And you were here when the witnesses were sworn this
7 morning; is that correct?

8 THE WITNESS: Yes.

9 THE COURT: All right. Please be seated and please
10 speak into the microphone.

11 DIRECT EXAMINATION

12 BY MR. BIGGS:

13 Q. Hi, Mr. Rosa.

14 A. Hi. Hello.

15 Q. Have we met before?

16 A. No. I mean, telephonically we've met.

17 Q. We've spoken a few times?

18 A. Yeah. Yeah.

19 Q. And were you the investigator in charge of investigating
20 Mr. Alonzo's defense for Mr. Hays?

21 A. Yes.

22 Q. I want to --

23 MR. BIGGS: If I may approach, Your Honor?

24 THE COURT: You may.

25 BY MR. BIGGS:

1 Q. I'm going to show you Petitioner's Exhibit 1.

2 A. Okay.

3 Q. Do you recall my faxing that document to you about a
4 week ago?

5 A. Yeah.

6 Q. And that is a document where Priscilla Rodriguez
7 identifies Licho Escamilla as the shooter of Santos Gauna.
8 It's a police report --

9 A. Yes.

10 Q. -- of Detective Berry.

11 A. Yes.

12 Q. What was your reaction when you first saw that document?

13 A. I've never seen this document, other than the time you
14 sent it to me.

15 Q. So you had never seen this document before?

16 A. No. Never.

17 Q. And would it be -- how -- how would (sic) you respond
18 when you received it?

19 A. Well, I was -- I was just surprised, because I -- I was
20 at Carl's office and I made a copy of the file he had and it
21 was -- it was not in there. It was pretty monumental.

22 Q. And do you ever remember seeing that document at the
23 time of trial?

24 A. No.

25 Q. And in investigating the case?

1 A. No.

2 Q. Did you have any idea that Priscilla Rodriguez had
3 identified Licho Escamilla out of a photo lineup?

4 A. No.

5 Q. What had been your -- information you had received in
6 regards to Priscilla Rodriguez at the time?

7 A. That she had been at the party and that she -- word had
8 it that she would state that she was there and she did not
9 see Quintin shooting.

10 Q. Did you know anything else beyond that?

11 A. No.

12 Q. And had you received that document would you have
13 investigated the case differently?

14 A. Well, yeah. I would have -- you know, there was a lot
15 of folks that I went to interview that I never got return
16 calls from and that kind of thing, but after not getting a
17 call from her I would have, of course, you know, having that
18 document in hand, we would have -- we would have pounded a
19 lot harder to -- to locate her.

20 MR. BIGGS: I have no further questions of this
21 witness.

22 THE COURT: Mr. Meador.

23 CROSS EXAMINATION

24 BY MR. MEADOR:

25 Q. Hi, Mr. Rosa. My name is John Meador.

1 A. Hi, John.

2 Q. Did you provide -- at any point did you remember saying
3 in an affidavit that you interviewed a person by the name of
4 Priscilla Rodriguez?

5 A. You know, I just got this -- this -- the affidavit, and
6 also my activity report. And I saw that in that affidavit
7 that I signed for I'm going to say Bill Cox, had Priscilla's
8 name on there, but I got her mixed up with this girl named
9 Lucy Montoya.

10 Yeah, but I did sign that, that I spoke with her, but
11 that was not -- that was not -- that was not correct. Yeah.

12 Q. Okay. So that portion of the -- of your affidavit, "I
13 interviewed several witnesses, including," and then Priscilla
14 Rodriguez, that's not true?

15 A. Yeah. I interviewed all the names that were on there
16 were on my activity report, but it should have been Lucy
17 Montoya and not -- and not Priscilla. So that name should
18 have been changed to Lucy Montoya. Because all the other
19 names are correct, except that one that was switched out.

20 Q. Okay. Do you recall in your activity report, I guess
21 along those same lines, that you had -- you encountered some
22 trouble with getting ahold of Priscilla Rodriguez?

23 A. Yes.

24 Q. Or finding her?

25 A. Yeah.

1 Q. What was your experience in trying to locate her?

2 A. Well, I had -- I had learned that she had been
3 incarcerated, I want to say TYC, and so, you know, I passed
4 that information on to Carl and he was going to get a
5 subpoena down there, and that kind of thing.

6 But I know that I had gone over, you know, to interview
7 her grandma, and the grandma -- grandma was pretty nervous
8 about that whole thing.

9 I think they lived not too far, maybe up the street or
10 two from where the fellow was shot, Santos, and I know the
11 grandma, you know, was real scared for her granddaughter.

12 She asked me, she said my granddaughter doesn't know
13 anything or, you know, she -- leave her alone, that kind of
14 thing.

15 Q. Now, do you recall -- do you know whether you
16 interviewed an Alexandra Rodriguez?

17 A. I don't think I interviewed anybody out of that
18 household. I know I went there, according to my activity
19 report, you know, looking for -- I think there were three
20 sisters, I could be wrong, but they were all residing at that
21 same household, and I don't think I was successful in
22 interviewing anybody.

23 I left my card there, but I -- I never got a return call
24 or anything.

25 Q. And so is that what you normally do if they don't -- you

1 just leave your card and it's up to them to contact you?

2 A. Well, yeah. I mean, there was so many people involved
3 in here that I went -- that I went to visit, and, you know,
4 if they have something to say, you know, they will -- they
5 will contact me back. I've had a few of them contact me back
6 out. One guy I went to interview he put up his finger and
7 goes and jumps out the window and he takes off. Well, I was
8 aware he didn't want to talk to me.

9 You know, if I leave my card and I let them know what
10 I'm there for, then if they want to talk they -- they
11 normally call me back.

12 Q. So that's the impression, you say if you want to talk
13 about this case, did you leave any mistaken -- did you let
14 people know that you were working, you know, for Mr. Alonzo?

15 A. Yes. Yes. In fact, I was -- on a few of those
16 instances I -- I know that I went over to Priscilla's house
17 with Alonzo's mom, and so they already -- you know, folks
18 already knew. We went over to Santos' house, you know,
19 attempted to interview the -- the stepdad. But, you know,
20 they were pretty upset and they asked us to leave.

21 MR. MEADOR: We'll pass the witness, Your Honor.

22 THE COURT: Any redirect?

23 MR. BIGGS: Nothing further, Your Honor.

24 THE COURT: Is there any reason this witness cannot
25 be excused?

1 MR. BIGGS: Not from petitioner.

2 MR. MEADOR: He may be excused, yes.

3 THE COURT: All right. Thank you, Mr. Rosa, you
4 are excused. You may leave.

5 Mr. Biggs, call your next witness.

6 MR. BIGGS: Your Honor, the State would call -- I
7 mean the petitioner would call David Alex to the stand.

8 THE COURT: Does Mr. Alex know he's being called to
9 the stand?

10 THE WITNESS: Good morning.

11 THE COURT: Good morning.

12 Mr. Alex, you were here when I swore all the witnesses,
13 were you not?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: All right. Please be seated and please
16 speak into the microphone.

17 I've had to remind the lawyers more than anyone else.

18 THE WITNESS: Okay. Thank you, ma'am.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. BIGGS:

22 Q. Morning, Mr. Alex.

23 A. Morning.

24 MR. BIGGS: Your Honor, if I may approach, I have a
25 copy of the transcripts from volumes 3 and 4.

1 BY MR. BIGGS:

2 Q. I don't know if you have a -- do you have a copy?

3 A. I've got certain excerpts that I pulled out that I've
4 been reading, and that will help.

5 MR. BIGGS: I also have the complete volumes here,
6 in case we don't have the excerpts.

7 This is not an exhibit.

8 You want to take a look?

9 MR. MEADOR: Oh, no.

10 THE WITNESS: Thank you.

11 BY MR. BIGGS:

12 Q. There should be a tab.

13 Mr. Alex, you were the prosecutor -- chief prosecutor in
14 this case of Mr. Alonzo regarding the aggravated assault of
15 Israel Martinez and Cynthia Martinez and the murder of Santos
16 Gauna?

17 A. I was the lead prosecutor on it. The chief in the court
18 was actually Eric Mountain.

19 Q. Eric Mountain.

20 And do you -- Have you had a chance to review the
21 transcripts from the trial?

22 A. I reviewed certain excerpts of the transcript. I can't
23 honestly say that I've read the whole trial transcript. I
24 think the trial probably was at least a week, maybe more. So
25 I've read a bit of it.

1 Q. Have you met with Mr. Meador or Ms. Kuykendall in
2 regards to this case?

3 A. Yes, sir, I have.

4 Q. Have you spoken with them on the phone and met in person
5 or --

6 A. Yes, sir, I have.

7 Q. So are you aware of the allegations that -- at issue in
8 this case?

9 A. I believe I'm aware of the allegations. I'm -- I'm
10 primarily a trial lawyer, so the trial issues I understand a
11 lot more than writ issues. But I think I've got a grasp of
12 what the issues are, and I think they have done a good job of
13 explaining to me, you know, what the issues are.

14 MR. BIGGS: Your Honor, if I may approach?

15 THE COURT: You may.

16 BY MR. BIGGS:

17 Q. I'm showing you Petitioner's Exhibit 2, in which I
18 believe is from the prosecutor's file.

19 Does that -- does that document look familiar to you?

20 A. That's correct. That's the document that I found in the
21 file after I think it was Mr. Meador had asked me to review
22 the file for anything that I -- that I thought might have
23 been important. And I found this document and I think I may
24 have scanned it and -- and e-mailed it or faxed it or
25 something to that effect.

1 Q. Do you recall actually making that document?

2 A. You know, seven years ago -- this is my handwriting, and
3 I know that I had started a practice of having people sign
4 for things when I gave it to 'em. And this probably would
5 have been around the time I started that practice.

6 But to be totally honest with you, if I told you I
7 remembered actually writing these things down, I'd say no.

8 Looking at the document I can be a hundred percent sure
9 that this is my writing and I created it though.

10 Q. And was this document made in response to a -- Mr. Hays'
11 omnibus pretrial motion for any and all Brady evidence?

12 A. In all likelihood it was not.

13 In the Crowley Courthouse many times you don't go on the
14 record for pretrial until the day of trial, and it's my guess
15 that we did not have a formal pretrial prior to trial.

16 What we had a practice of doing, it's a little different
17 now, is anything that -- the defense would come to us, they
18 would look through the file. If they wanted copies, they
19 could make copies. If we were going to give them something,
20 we would give it to them. Many times they never signed for
21 it.

22 I got in the habit of making them sign for it, and
23 apparently this was one of those situations. It would not --
24 it would not have been in response to an order from the
25 court, I don't believe.

1 Q. Okay. So the fact that he filed an omnibus motion on
2 the 16th and this was turned over the 17th is really more of
3 a formality; is that -- is that correct?

4 A. It would be -- yeah -- well, it's probably not a
5 formality. The formality would be when the judge orders to
6 turns things over, then obviously anything that hadn't been
7 turned over at that point we would have been ordered to turn
8 over.

9 This would have just been as a matter of course. I knew
10 he was going to get the stuff. I knew whatever he didn't
11 have I would give it to him, and in this particular instance
12 evidently I had him sign for it.

13 Q. And do you recall giving him any documents prior to that
14 date?

15 A. My specific memory would be I don't, other than what --
16 other than what I'm looking at here, I wouldn't have any
17 specific memory, but I can -- I can be pretty confident that
18 anything he would have asked me for out of the file he would
19 have got.

20 And I can tell you I've looked through the file and I
21 saw the redactions, and typically I'm not going to redact --
22 I'm going to redact stuff when it's going to get turned over.

23 And so I know that there were other things given to him
24 other than what's here.

25 Q. You know there were other things given but you just

1 don't know exactly what?

2 A. If you show me a document I can probably tell you
3 whether he got it based on whether it was redacted or not,
4 from my -- the way I did business back then.

5 Q. Do you recall -- Well, you spoke a second -- a minute ago
6 that the system is different now.

7 How is the system different now than it was back in 2003
8 when this trial occurred?

9 A. Well, when this trial occurred we didn't -- the office
10 did not have a policy on discovery. Every prosecutor did it
11 a little different. And a lot of times it depended on who
12 your chief was and the guidance that you -- that you
13 received.

14 Nowadays, since the new administration, Mr. Watkins, our
15 policy is to copy everything that's not work product and to
16 turn it over when it's requested, even if it's not set for
17 trial. If they want it, they can come look at it. If they
18 want copies of it, they can get it at their own expense or we
19 can scan it or however it's done. But that was not a formal
20 policy back then.

21 Q. So when you say everything other than work product, what
22 documents would that -- would that be every document in the
23 prosecutorial file?

24 A. Are you talking about now or then?

25 Q. Now.

1 A. Now?

2 Well, I mean, I could -- I could probably read to you
3 what's in the -- in the -- in the policy manual, but work
4 product takes on a different meaning whether you're
5 talking -- legally a police report, if I looked it up in the
6 code, it would probably be work product, but we still turn
7 that over.

8 So when I say work product I'm typically talking about
9 my mental impressions, if I'm speaking to another lawyer
10 about my strategy in the case, the kind of things that you
11 would think about that is not really a part of the case, it's
12 more a part of what your strategy is, what you're thinking,
13 those kind of things.

14 And today as our policy is, if you came to me for
15 discovery or if you wanted to look in a file, those kind of
16 things should be separated and anything else you're free to
17 look at or get a copy or a digital copy.

18 Q. Do you have access -- do you receive every document
19 generated by the police in regards to any particular
20 arrestee?

21 A. Today or back then?

22 Q. Today.

23 A. Today?

24 That's an interesting question. It's -- we are at the
25 mercy of the filing agencies. I can tell you there are

1 times, most recently, when they tell me I have everything but
2 I have to go down and look for myself. Because they're human
3 beings just like we are, and when they tell me I have
4 everything, oftentimes I will go and I will find things that
5 they will think is unimportant, but they have a different
6 purpose than I have.

7 So the answer to that question is I would like to think
8 I have everything that they have, but oftentimes I do not.

9 Q. Sometimes just by accident you might not have
10 everything?

11 A. Yeah. Oftentimes it is by the fact that we're all human
12 beings.

13 Q. And how -- how is it different -- how was it different
14 back then?

15 You said that today that's the case, that you receive
16 every document unless some mistake, what about back then?

17 A. A -- a -- a lot of it has to do with training.

18 Back then you -- you -- you were probably trained by
19 your chief, and if you had a good chief he would have told
20 you on a serious case you need to go down to the police
21 station, you need to look at that folder, you need to make
22 the copy yourself, and you need to know everything that's in
23 it.

24 Today -- I -- I supervise about eight courts and it
25 is -- it's not just an option, it's what they must do. They

1 have got to go down and look at the folder and the file, and
2 whatever is there get a copy of.

3 It's a lot more formalized than it was back then.

4 Q. When you say "they" do you mean prosecutors or . . . ?

5 A. Prosecutors. The investigators many times will do it.

6 But, again, the prosecutor is going to be held
7 accountable for it and so they know if they have somebody
8 else do it they're still not going to be able to stand back
9 and say I didn't -- I didn't have that. They will still --
10 they will still be held accountable for it, so . . .

11 Q. Is it more likely that every document generated by a
12 police agency is going to be in the prosecutor's file now
13 than it was back then?

14 A. Is it more likely now?

15 I think it's going to depend on the people involved, to
16 be honest with you. I mean --

17 Q. Has -- has your personal policy changed since the
18 policy -- the officewide policy has changed?

19 A. Since it's changed?

20 Q. I mean, are your procedures different now that the
21 policy of the entire office has changed, your personal
22 procedures you used?

23 A. Well, my procedures had to be in line with what the
24 policy is now, if that's what you're asking me.

25 Q. So did -- were -- did you change your procedures in

1 light of the policy?

2 A. You know, I'll tell you, the -- there -- there are times
3 when -- and I don't know if you really want me to explain
4 that or not, but I -- my procedures have -- have changed
5 since the new policy is in place, yes. And I can explain
6 that if you want me to.

7 Q. What do you do now that you didn't used to do?

8 A. Well, I'll give you a perfect example.

9 MS. KUYKENDALL: Objection, Your Honor. On
10 relevance grounds.

11 I mean, what -- what's relevant is what he was doing at
12 the time of this trial, and -- as opposed to what he does
13 now.

14 THE COURT: Mr. Biggs.

15 MR. BIGGS: Well, Your Honor, if -- if -- the
16 relevance is -- okay. Well, I can ask it maybe a little more
17 direct way.

18 THE COURT: All right.

19 BY MR. BIGGS:

20 Q. What -- what procedures did you have in place prior to
21 the policy being changed, in terms of obtaining police
22 documents for your file?

23 A. Okay. And during this time frame?

24 Because I'll tell you, Mr. Biggs, my procedures evolved
25 over time as -- as a felony prosecutor's procedures evolve,

1 without a -- a clear-cut guidance. Okay?

2 So at the time that this case came about I would -- as
3 you see here, I had started making a list of this things that
4 I would give to somebody and have them sign for it, as it is
5 here. But if you came in my workroom and I had ten lawyers
6 standing out in the hall and you came in and you said, hey, I
7 know there's a confession or there's a statement by Juan
8 Escamilla or by Frank Hernandez or something like that, or
9 there's a note or something, and you wanted it, you could
10 come in, I'd give it to you, you could go make a copy of it,
11 and I may make -- I may have an intention of having you sign
12 for it and it never happen. So those things happened all the
13 time.

14 Q. But that would be after it came into your possession in
15 your file?

16 A. Right.

17 Q. Is that right.

18 A. Right.

19 Q. What were your procedures back then in terms of
20 obtaining documents from the police agencies, the filing
21 agencies back then?

22 A. At the time that this case occurred, I could be pretty
23 confident that Detective Berry would have copied the file
24 and -- and gave it to me. I mean, that's -- and I'll be
25 honest with you, I don't have specific memory of that.

1 Detective Berry was very active in this case and if I
2 had said to him, Rick, would you get a copy of the file, I
3 would have felt comfortable with that, because I had worked
4 with Detective Berry for a number of cases and I -- I felt
5 confident that if it was in the file I would have had it.

6 Q. But when it comes down to it you're never really going
7 to know for certain, right, whether you ever have everything,
8 and that's true now as it was back then?

9 A. Yes. I mean, you're never -- you're never going to
10 know -- I mean, yeah. Yeah. That's correct.

11 Q. Okay. I want to show you what's been identified as
12 Petitioner's Exhibit 1.

13 A. Okay.

14 Q. Do you -- do you -- have you reviewed that document
15 before?

16 A. Yes, sir, I have.

17 Q. When was the last time you reviewed that document?

18 A. Probably while I was sitting in the waiting room waiting
19 to come in here.

20 Q. When -- when did you -- in the last year when did you
21 first see that document?

22 A. In the last year?

23 Q. Yeah.

24 A. You're not talking about starting from January. You're
25 talking about the last 12 months, from when I first saw it?

1 Q. Sure. Sure.

2 A. Now you're really testing my memory.

3 Q. Did -- did the -- did the Attorney General bring it to
4 your attention?

5 A. An attorney general brought it to my attention, but it
6 wasn't these two Attorney Generals.

7 Q. Okay. Were you -- do you remember that document back
8 when you prosecuted this case?

9 A. This document --

10 Q. Did you remember the -- yeah.

11 Did you remember that document as being in existence at
12 the time of the case?

13 A. I'm confident this was in existence and probably -- oh,
14 yeah, it was in existence.

15 Q. Do you remember having reviewed that document prior
16 to -- prior to trial?

17 A. I can tell you that not only did I review it but I would
18 have been the person who redacted it before I turned it over.

19 Q. How do you know -- how do you know that?

20 A. Because I can -- I can probably pull out every document
21 that was redacted and it's all going to be redacted this same
22 way.

23 This is what I would have done back in -- at that time.

24 Q. But how are you able to tell that that document was
25 redacted by you, as opposed to someone else?

1 A. Well, I'll give you a perfect example.

2 All right. I'm assuming here I redacted out -- I mean,
3 I'd have to pull out the unredacted -- I was kind of anal.
4 Not only did I redact birth dates, Social Security numbers,
5 driver's license, but any identification information. Unless
6 that witness told me it was okay to turn that over, I
7 redacted it. And everybody didn't do that.

8 And I always used a black marker like this back then.
9 At one point I experimented with white-out. I mean, at the
10 D.A.'s office we weren't quite in the 20th Century yet with
11 redaction software and all that.

12 But different people have different styles. And if I
13 look through a file that I handled and I see the redactions
14 here, Eric Mountain didn't do it, my investigator didn't do
15 it, I don't have a legal assistant, I don't have a secretary.
16 This would have been my work.

17 Q. You're sort of inferring from the circumstances that
18 that was probably redacted by you?

19 A. I'm -- I'm -- I'm confident of that, yes, sir.

20 Q. Do you -- And I know it's been a long time.

21 Do you recall actually turning that document over to
22 Carl Hays?

23 A. Like I said, I mean, honestly speaking I don't recall
24 turning -- I don't recall the moment when I turned anything
25 over to Carl Hays, including this document.

1 But what I can say to you is just from the documents I
2 have in front of me right now, the things that he signed for
3 I know he would have gotten, and the things that were
4 redacted by me I can say for certain he would have gotten,
5 and the things that weren't redacted, he may or may not have
6 gotten

7 Q. Well, do you -- do you agree that that document probably
8 does not fall under any of the categories in the exhibit
9 which -- where you list the documents that were turned over
10 to the defense?

11 A. Now, there's a -- there's a good question.

12 Because, I'll tell you, there was a time -- when I
13 organized a file, if I had an affidavit and there was a note
14 associated with that affidavit -- in other words, many times
15 a person will say to the police X, Y, and Z, in their
16 affidavit, but when you get the note, the note sometimes will
17 say Xi sh, Yi sh, and Zi sh, and I will always include the two
18 of those together in my own documentation. And this very
19 well could have been attached with any notes relating to what
20 Priscilla Rodriguez said with her affidavit.

21 Do I know for sure that's the way it happened? No.

22 So the answer to your question: I'm not sure.

23 Q. You're not sure whether that would have been under any
24 of those categories?

25 A. Right.

1 It could have very well been attached with the affidavit
2 of Priscilla Rodriguez, because my practice back then would
3 be to check whether the note is consistent with the
4 affidavit, because there's always going to be an impeaching
5 moment if it is not.

6 Q. So, but you agree that document is not an affidavit, the
7 detective's report?

8 A. It is not an affidavit, that's correct.

9 Q. And are you aware that -- of whether Ms. Rodriguez did
10 in fact sign an affidavit in this case?

11 A. She did.

12 Q. Okay.

13 MR. BIGGS: I'd like to approach, Your Honor.

14 THE COURT: You may.

15 BY MR. BIGGS:

16 Q. Show you Petitioner's Exhibit 7.

17 Have you had a chance to review that document?

18 A. Yes, sir.

19 Q. And that is a copy of the affidavit that she gave the
20 night of the shooting. Is that correct?

21 A. That's correct.

22 Q. And are most of the affidavits on that list of documents
23 that you -- on the list of names under the category
24 affidavits that you turned over, are most -- are most of
25 those affidavits affidavits that were signed that night, the

1 night of the shooting?

2 A. Without reviewing them, it's hard for me to say.

3 I believe there may have been some affidavits that --

4 I'm sorry, I'm not speaking into the microphone.

5 There may have been some affidavits that were given -- I

6 mean, let me -- do you want me to review this list?

7 Q. Sure.

8 A. I may be able to tell you from reviewing the list.

9 And I don't believe this is what I gave to Mr. Hays.

10 I think what I gave to Mr. Hays, the LF and the birthday
11 would have been redacted. So this would probably -- the
12 document I gave to him I think is in -- in this box here, is
13 probably going to have that identifying information redacted.

14 Q. But if we had -- I mean, if we obtained that affidavit
15 from -- it's directly from the police department, would that
16 be redacted?

17 A. No. Unless the police department redacted it.

18 If you obtained it from my file it would -- well, the
19 police department would have -- I don't know if they would
20 have redacted it or not. I would assume not, if -- depending
21 on if it was requested after the trial was over, I mean, I
22 don't know what their procedure -- what their -- what their
23 policies are.

24 Q. Well, would you agree that that -- the document that
25 lists all the things that were turned over, that does not

1 include every police report generated in the case?

2 A. It -- it included the prosecution report. And, again, a
3 prosecution report, when it comes to me in a folder it's
4 going to say prosecution report across the top, and it's
5 going to have everything stapled to it, including --
6 everything the police decide to give us at the time they file
7 the case is going to be there.

8 And then it's taken apart, it's subdivided.

9 And so when I see "prosecution report" here, it could
10 mean that all he got was just the printed prosecution report,
11 it could mean that he got everything I had in the folder at
12 that time.

13 Q. But there is a document that the police department
14 creates that's entitled prosecution report; is that correct?

15 A. That's correct.

16 Q. And what typically comes on a prosecution report?

17 A. The prosecution report, it's -- it's sort of a misnomer,
18 because what you're going to have is -- you're going to have
19 all stapled together, it's going to say prosecution report,
20 it's going to be what they generated to give to us. Included
21 in that is going to be a police incident report. It's going
22 to be an arrest report, if there's one. It's going to
23 include witness statements.

24 And a lot of times it all depends on the detective and
25 what they include with that prosecution report when they file

1 it. Some detectives won't give you anything, you got to go
2 over there and make all the copies. Some of them will give
3 you everything that they have at the time right there in your
4 prosecution report.

5 MR. BIGGS: I'd like to -- may I approach, Your
6 Honor?

7 THE COURT: You may.

8 BY MR. BIGGS:

9 Q. I'll show you defendant -- Petitioner's Exhibit 8, and
10 that is a copy of a prosecution report that was obtained
11 through an open records request of the Dallas Police
12 Department.

13 If you wouldn't mind taking a minute just to review
14 that.

15 I believe that document is how many pages? Four pages?

16 A. It's four pages.

17 Q. And on each page of that document it says the words
18 "prosecution report," is that correct?

19 A. Yes, sir.

20 Q. So would there be anything -- what documents beyond the
21 documents that actually have the words "prosecution report"
22 on them would -- would be in a prosecution report that was
23 turned over from the prosecutor?

24 A. The police incident report would be included in that.
25 The police arrest report.

1 The warrant and affidavit for the arrest.

2 The magistrate form would be included in that.

3 We're -- we're talking about semantics right now.

4 The prosecution report -- if I had a brand-new file that
5 I just got from the police today it would say "prosecution
6 report" on the front and all of that would be stapled
7 together. And if you asked me for the prosecution report,
8 you would get that whole thing and the title of it would be
9 prosecution report.

10 Q. But it's not going to have all the supplements from
11 every police report?

12 A. It could. I mean, it's not going to have -- it depends
13 on the type of case it is and it depends on the detective. I
14 mean, I'm just being honest with you. That's what it --
15 that's what it would be. I mean, some detectives make you go
16 out and get it all. Some of them give you a little bit, and
17 you know from reading the report that there's more there.

18 I think the -- the notion of calling it a prosecution
19 report is that we want them to summarize what they're giving
20 us.

21 Q. So is -- does Dallas Police Department -- does their --
22 does their document entitled prosecution report differ in any
23 way from what the District Attorney's Office would call a
24 prosecution report?

25 Is it the same document?

1 Are we referring to the same document?

2 A. You're referring to the same document, but, again,
3 you're talking semantics. Because if you ask the police
4 officer -- we have this problem all the time when we're
5 talking to the police.

6 You could go down in a misdemeanor court right now and
7 ask for a prosecution report -- or a police officer -- they
8 will be -- they will tell the police officer, okay, did you
9 read your report. And they're talking about the prosecution
10 report.

11 The police officer is reading the incident report that's
12 included in it and many times it's got a lot more details,
13 and they're not even on the same page.

14 So we have to -- sometimes we have to tell them I need
15 you to review the whole report, that includes everything
16 that's stapled to this prosecution report. If that makes
17 sense. I don't know. It's kind of difficult to -- to
18 explain.

19 But for the fact that if you ask the prosecutor many
20 times about the -- the report, the prosecution report, you
21 could get two or three different answers, because of what's
22 stapled to it and what's included with it.

23 Q. But when -- when you wrote down "prosecution report" is
24 it fair to say that that may or may not have included that
25 detective's report? With Priscilla Rodriguez identifying

1 Li cho Escami lla as the shooter?

2 A. This statement -- I mean Defense --

3 Q. Exhi bi t 1.

4 A. Would it have included this?

5 Q. Yeah.

6 A. I mean, there's no way for me to tell you that.

7 Q. Would that have fallen under the category of prosecution
8 report?

9 A. If it had been -- and I -- and I hate to keep
10 digressing, but when I look in the file right now, clipped to
11 the prosecution report is a number of documents, but it's
12 been handled by a bunch of people.

13 If it was included with the prosecution report when I
14 got it, it's -- it's possible that when I gave him this, and
15 he signed for it, it would have been a part of that.

16 MR. BIGGS: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. BIGGS:

19 Q. I'd like to show you Petitioner's Exhi bi t 5.

20 This is a copy of the transcript immediately prior to
21 the beginning of testimony. I believe it was after the voir
22 di re.

23 Just take a second to review that, please.

24 A. Okay. Did you mean to give me this part with
25 Investigator Rosa's time card --

1 Q. Oh, no. Sorry about that.

2 A. That's all right. (Pause.)

3 Okay.

4 Q. Did you have a chance to read through that?

5 A. Well, I didn't read it all, but I -- I recognize what it
6 is.

7 Q. Okay. In there it appears that you and Mr. Hays put on
8 the record that you turned over all Brady material, at least
9 to your knowledge, to him prior to trial. Is that correct?

10 That he had filed a motion.

11 A. I'm sorry, could you repeat the question?

12 Q. My question was: There at -- it was really as to the
13 content of that transcript. It basically discusses on the
14 record the pretrial motion filed by Mr. Hays and your
15 representation that all Brady material had been turned over.
16 Is that correct?

17 A. That's correct.

18 Q. And it also says that you were going to give Mr. Hays an
19 opportunity to review his -- Investigator Berry's notebook.

20 A. Correct.

21 Q. What is the investigator notebook?

22 A. It's going to be everything in the file -- everything
23 related to the case that -- the lead detective's job is to
24 collect any report connected to the case.

25 It would be what I would have copied if I had gotten a

1 copy from Detective Berry, and it would have all been in a
2 notebook much like this (indicating).

3 And what we're referring to here is the practice back
4 then was when a lead detective took the stand under our rule,
5 state rule 612, after they testified they would hand the
6 notebook over to the defense lawyer and everything as it
7 related to this case he had an opportunity to look at. And
8 it was really a courtesy back then if they got a chance to --
9 to peruse it beforehand.

10 And I think what we said here was that I didn't have any
11 objection to him looking at it right now, beforehand, or
12 whenever he wanted to, which would have included everything
13 in the case

14 Q. So what documents would have been in the investigator's
15 report that would not have been in the documents you turned
16 over? Back then.

17 A. I mean, who -- there's no way for me to tell you that.

18 I mean, for instance, there will be pages and pages
19 of -- of maybe a Lexis search. If you're looking for a
20 witness and you're not able to find them, there may be 20 or
21 30 pages of where they tracked this person to this house or
22 to that location or to this car and to that. There could
23 be -- I mean, there could be a myriad of things that I didn't
24 get from Detective Berry, and quite frankly didn't want.

25 But for the most part I would imagine anything that was

1 of substance would have been what I had and what I would have
2 turned over to him.

3 Q. Did you independently look at Detective Berry's file and
4 pluck things that you thought might have been important or
5 might have been exculpatory evidence, do you recall?

6 A. I don't recall doing that, but -- You know, the problem
7 I have right now is - seven years later - is the prosecutor I
8 am now is not the prosecutor I was back then, meaning I have
9 a lot more experience now, I've been through a lot of things.
10 And -- and as it stands now I probably, you know, at some
11 point in my career decided that I would double-check for
12 myself. Whether I did that back then or not, I can't say.

13 Q. So is it possible that you might have relied on
14 Detective Berry to turn over whatever you -- he thought was
15 exculpatory or germane to the prosecution?

16 A. Well, no. Because it's my duty to turn it over. He
17 obviously -- and I don't think the police quite understand
18 that duty. It's one of the things we're having talks about
19 right now.

20 But it's my duty to turn it over if it's favorable to
21 the defense. And I would have been -- if -- if I didn't look
22 through his notebook and there was something there that was
23 exculpatory, then that would be on me, that wouldn't be on
24 him.

25 Q. But -- but it's possible that you did not look through

1 the notebook and find -- and -- look through the notebook?

2 A. I -- I would say that would be not very likely. I would
3 have looked through the notebook. Even -- even back then, if
4 he would have showed up with a notebook I would have had
5 everything in the notebook, I would have felt confident,
6 because I knew Detective Berry, but I -- it would have been
7 in my nature to look through that.

8 I'll give you a perfect example. The lineups that we
9 use in trial, I would want to put in the original. I
10 wouldn't want to put in the black and white. Back then they
11 would give us black and whites, I'd have to request specially
12 color copies. The lineups I would get out of the notebook --
13 and I would look through everything in there. He would have
14 a whole section of photographs. Many times I would look
15 through the photographs, just to make sure there was
16 something, you know, that's going to help me that I didn't
17 see before.

18 Q. Would you agree that the detective's notebook is
19 relatively voluminous?

20 A. It's -- it's most certainly voluminous, yes, sir.

21 Q. So it's possible, I mean, you might miss something?

22 A. That's possible, yes, sir.

23 Q. And do you know whether Carl Hays in fact ever looked at
24 the detective's notebook which you made available to him?

25 A. I would say from -- from personal memory I don't know.

1 But I would say from looking from the record that you just
2 gave me, he made it a point to say that he hadn't looked
3 through it yet but he wasn't waiving that and he wanted to
4 look at it. And I didn't object to him looking at it right
5 then and there. And from the records that I saw in reading
6 the transcripts, Rick had the notebook up there with him --
7 I'm sorry, Detective Berry had the notebook up there with him
8 and when he was passed we took a break.

9 So my best guess would have been he either would have
10 looked at it before and after direct or one or the other
11 would have been my -- my best guess.

12 Q. And given that it's fairly voluminous, do you agree it
13 would probably take a considerable amount of time to actually
14 cull through that document?

15 A. I would agree with that, yes, sir.

16 Q. And is there any indication that any sort of recess
17 was -- there was any sort of recess in the proceedings so he
18 could look through that?

19 A. There is an indication -- I think when we passed Rick on
20 cross there was a break -- I mean Detective Berry. I'm
21 sorry, Your Honor, I -- when I -- I mean Detective Berry.

22 And many times what will happen is the lawyer will ask
23 the judge to look at it over the lunch hour and as long as
24 they didn't walk out of the building with it many times they
25 would look at it in the D.A.'s workroom or -- or anything

1 I like that.

2 So I would say -- I would say he probably did look at
3 it, but I couldn't say for certain.

4 Q. And in -- in the transcript we were just talking about,
5 I believe you said on the record that all exculpatory
6 information had been turned over to the defense but that you
7 were also making available Detective Berry's report but that
8 that was a separate deal; is that correct?

9 A. I'm not sure if I understand your --

10 Q. Well, if you could just --

11 A. -- question.

12 Q. -- take a look at the transcript.

13 A. Okay.

14 Q. I think it's the third or fourth page where you're --
15 you speak about his pretrial motion.

16 A. Let me -- let me catch up with you here.

17 Tell me which page it is.

18 I see it. I see it.

19 Q. Yeah. Page 11.

20 A. Okay. Actually, starting on page 10 the conversation is
21 "For the purpose of the record, we filed pretrial motions. I
22 think the State has complied with all. We've also filed an
23 exculpatory motion. I've been promised by the State that I
24 would be permitted to review the detective's notebook."

25 That tells me Mr. Hays was dead set on looking at it.

1 "At this point we have not reviewed the notebook but I
2 don't -- but I don't want in any way our exculpatory motion
3 to be waived."

4 Okay. And then my response is: "The State has turned
5 over all the evidence in its possession that was exculpatory
6 and it has turned over quite a few pretrial items that were
7 signed off on by the defense attorney and the offer by the
8 State to look at the detective's folder was in advance of him
9 testifying," and I go on to say that I don't -- I don't have
10 any objections to that.

11 So, I don't know if I answered your question or not.

12 Q. Do you -- do you also say in there that that's a
13 separate matter, that the detective's notebook is separate
14 and apart from the exculpatory information in there?

15 A. You can say that.

16 I mean, my representation to the court was anything that
17 I had in my possession that was exculpatory I turned over.

18 Now, sort of the catchall is it's all here. I mean,
19 there -- there could be some things that the defense knows is
20 favorable to them -- to them, because they know their case
21 better than I know it, and so if there's anything in there
22 that's favorable to him, he's got the right to look at it,
23 make copies, whatever he wants. And that's primarily the
24 reason that we change things the way we do it now, is because
25 if they get it all I don't have to secondguess what his

1 theory of his case is and what's favorable to him.

2 Q. But -- but would you agree that you were making the
3 representation that everything to your knowledge that was
4 exculpatory had been turned over already.

5 A. Anything that was in my possession, yes, sir, that's
6 what I said.

7 Q. And that additionally you were allowing them as a
8 courtesy to look at the detective's notebook?

9 A. That's correct.

10 Q. And back then you weren't required to turn that over but
11 it was a courtesy?

12 A. That's correct.

13 Q. I'm sure you've reviewed the testimony that -- have you
14 had occasion to review your direct and cross and -- or
15 redirect of Detective Berry in this case?

16 A. I have.

17 Q. And would you agree that the testimony that Detective
18 Berry gave was misleading?

19 A. Well, I would agree -- I would agree that some of it
20 was, yeah. I would agree that in the context of the cold
21 record, yes, it was.

22 Q. I mean, when -- when you asked him:

23 "Q. As a result of your investigation did you have
24 any evidence that supports that he --" this is on trial
25 volume 3, 167, lines 9 through 13:

1 "Q. Did you have any evidence that supports that
2 he --" and it's clear from the context that's Licho
3 Escamilla, "-- shot Israel Martinez?"

4 And Detective Berry says:

5 "A. No, none of the evidence we collected
6 indicates that Licho Escamilla was the one who shot Santos
7 Gauna, Israel Martinez, or Cynthia Martinez."

8 Do you agree that that is a false statement?

9 A. Well, I would agree that that is not grammatically
10 correct as it relates to what he just said.

11 But if you'll look at the question prior to that, the
12 context of it, Mr. Biggs. At line 4, when I said
13 "investigation" I was talking about the 17 people that they
14 interviewed that night. And I don't know if you want me to
15 explain it or not.

16 I mean, I do -- I do agree with you that when you read
17 that question and that answer that that totally disregards
18 what Priscilla Rodriguez had told Detective Rodriguez -- I
19 mean Detective Berry.

20 But, you know, to go back seven years and to -- and to
21 try and -- and get back in the zone that I was in then, my
22 thoughts as best as I can recreate them, when I asked in the
23 previous question, "And from your question -- and from your
24 investigation talking to those 17 people," now, I didn't say
25 that night, but that's the zone that I was in, "-- did you

1 have any opinion of whether he was shooting out there?"

2 And he says yes.

3 And then to go on, "And as a result of your
4 investigation," no, I didn't say that investigation or that
5 investigation that night, but my recollection of what I would
6 have been thinking would have been the investigation on that
7 night talking to those 17 people.

8 And to -- to be quite frank with you -- with you, the
9 more that I read this, the more that I was thinking, well,
10 that was a pretty boneheaded question and answer. But when
11 you think about the heat of the battle that you're in and
12 when you're asking the questions, I was combating the theory
13 of the case that when -- when something -- when -- when you
14 go out there the night of the offense and nobody points to
15 the defendant or nobody mentions the defendant's name as
16 being the person who shot him, that night, in my mind part of
17 my theory is to rebut that. And nobody pointed Licho out, or
18 anybody that knew Licho didn't say that Licho was out there
19 shooting, and that's the context in which I read this. I
20 know that that's not on the written page and therefore to 12
21 people in a box it could have been misleading.

22 Q. Do you agree that Priscilla Rodriguez was one of those
23 17 witnesses that was brought in to the police station that
24 night?

25 A. I do agree.

1 Q. I'd like to direct your attention to your closing
2 argument. This is Volume 4, lines 9 -- or pages 199 to 200.

3 A. Could you tell me the lines one more time?

4 Q. That was at page 199 to 200, lines 15 to 25, and then 1
5 through 5 on the following page.

6 So 15 to 25 on page 199, beginning there.

7 And you testified that the detective in this case told
8 you that when those 15 people -- 17 people were brought down
9 to the police station and talked to, none of them could
10 eliminate Santos Gauna, none of them could tell him -- that
11 must be Licho Escamilla.

12 Is that actually in the transcript?

13 None of them could tell him that he was the man that --
14 that shot Santos Gauna. And I understand your testimony that
15 you might have been referring in the heat of battle to that
16 night, but then when you say he showed lots of photo lineups
17 to lots of people and none of those people identified this
18 man as shooting Israel Martinez, Santos Gauna, or Cynthia
19 Martinez, were there any photo lineups actually shown to any
20 of the witnesses that night, the night of the shooting?

21 A. I don't believe that they had anybody's name, other than
22 Licho Escamilla at that time, and I don't believe there were
23 any photo lineups shown that night.

24 Q. So, I mean, in this closing argument we're sort of
25 conflating the night of the incident with subsequent photo

1 identifications of -- throughout the investigation, am I
2 right?

3 A. I'm sorry, could you repeat that?

4 Q. I mean, are you -- are you not conflating the night of
5 the incident when 17 people came down to the police station
6 with subsequent photo lineups that were administered to
7 witnesses?

8 A. There was certainly that addition to that in my closing
9 arguments. Yes, sir.

10 Q. All right. I wanted to direct you to volume 3, line
11 168 -- page 168, lines 22 through 25, just to jump back.

12 A. I'm sorry, which volume?

13 Q. Volume 3 --

14 A. Okay.

15 Q. -- pages 163 -- page -- page 168.

16 A. Is this going to be the rebuttal of Mr. Berry?

17 Q. You say did anybody exclude the defendant as being the
18 person who killed Santos Gauna or committed the aggravated
19 assaults.

20 And Detective Berry said no.

21 A. Okay. I'm sorry. I'm not at the same place you are.
22 Are you in volume --

23 Q. I'm on volume 3.

24 See, it's a little tricky because volume 3 the pages are
25 in the 160s and volume 4 they also happen to be in the 160s.

1 A. Right.

2 Q. It's volume 3, page 168, is what I'm referring to.

3 A. All right. All right. Okay. Let me go to -- I thought
4 I had it all here in front of me.

5 So we're not talking about the rebuttal, are we not?

6 Q. We're not at this point.

7 A. Okay.

8 Q. And I apologize for jumping back.

9 A. That's okay. We're talking about the direct.

10 And volume 3, page 168, lines --

11 Q. 22 through 25.

12 A. Okay. All right. I'm with you.

13 Q. Okay. And you say -- you ask Detective Berry did
14 anybody exclude the defendant as being the person who killed
15 Santos Gauna or committed the aggravated assaults.

16 And Detective Berry says no.

17 Do you agree that that statement is not in the context
18 of the photo -- or the 17 witnesses interviewed that night?

19 A. I agree with that, yes, sir.

20 Q. Okay. I wanted to direct your attention to one --
21 another colloquy you had with Detective Berry, and this
22 actually is in volume 4 during the redirect, and it is pages
23 164 and 165 of volume 4.

24 A. 164 and 165; is that what you said?

25 Q. Yes, sir.

1 A. Volume 4. Okay.

2 Q. And this is beginning at lines 18 through 21 and going
3 on to lines 2 through 10 on page 165.

4 You say: "And did anybody positively identify Li cho
5 Escami lla as being out there, being the person who shot
6 Santos Gauna?

7 "No. No one identified Li cho Escami lla as shooting
8 Santos Gauna.

9 "And you showed this lineup to Frank Hernandez?

10 "I did.

11 "And you showed lineups of who else?

12 "Of Jose Escami lla, of Juan Escami lla, and the
13 defendant, Quintin Alonzo.

14 "And did anybody out of all the 17 people that you
15 talked to identify any of those people as the person who shot
16 either Santos Gauna, Cynthia Martinez, or Israel Martinez?"

17 Berry: "No, they didn't."

18 And you say: "Did anybody exclude the defendant as
19 being the person that shot either Israel Martinez, Cynthia
20 Martinez or Santos Gauna?"

21 Detective Berry says: "No."

22 Do you agree that that colloquy is misleading?

23 A. I agree by including the lineup information there then
24 that is -- that is misleading, under the mindset that I was
25 in at the time, yes, sir.

1 Q. But you agree that you are conflating the night of the
2 shooting with subsequent photo lineups, whether intentional
3 or -- or unintentional?

4 A. Well, I'll tell you, in -- in -- we're going back seven
5 years, but I'll tell you what my mindset was.

6 If I was asking this question today my question would
7 have been was there any credible person that you showed the
8 lineup. Because when I look at it -- when I look at it
9 today, and again I'm going back seven years, when I look at
10 it today Priscilla Rodriguez, if she knew who Licho Escamilla
11 was at the time she talked to them, she would have said Licho
12 Escamilla shot Santos, because that's what she said two weeks
13 later, after she had talked to Mr. Guzman who told her who
14 was out there shooting.

15 So the thought -- the thought process, it's just a bad
16 worded question and it is adding stuff on to it with the
17 lineups. And if -- if I had just said credible witnesses it
18 wouldn't have been misleading, but because I didn't say
19 credible witnesses that is misleading.

20 Q. And were you aware -- were you aware that Priscilla
21 Rodriguez had identified Licho Escamilla as shooting Santos?

22 Did you remember that?

23 Are you aware of that?

24 A. Am I aware of it now?

25 Q. Were you aware of it at the time of trial?

1 A. Yeah. At the time of the trial, yes, sir.

2 And, in fact, I probably -- we were trying to get
3 Priscilla Rodriguez there to trial. I wanted to talk to her.
4 I mean, there's lots of notes in there of tracking her down.
5 Because my thoughts of Priscilla Rodriguez was just what I
6 said to you, was she there, was she not there, did she see
7 this, did she not see this.

8 It was -- it was very incredible to me that two weeks
9 later or three weeks later when she was shown the lineup that
10 she would know Licho not only by name -- not only by sight
11 but by name, would know who his cousins was and would
12 volunteer to the detective that she talked to Mr. Guzman, who
13 was out there shooting, and he told her that Licho was out
14 there shooting. And the fact that she didn't know this back
15 at the time, that night, which was kind of stuck in my brain,
16 she didn't know any of this that night, but after the rumors
17 on the street were that Licho -- Licho did it, she very well
18 could have thought that she was helping the case out after
19 Mr. Guzman told her Licho was the one out there shooting by
20 pointing to him and saying, yeah, that's Licho, he's the one
21 who did it, that kind of thing. So, mean, that's -- that's
22 sort of the mindset that I think I had with Priscilla
23 Rodriguez.

24 Q. But you were -- you were aware that she was someone who
25 had in fact told Detective Berry that Licho Escamilla had

1 shot Santos?

2 A. That's correct.

3 Q. Okay. And I want to show you -- shifting gears to 2007.

4 Do you recall --

5 THE COURT: Mr. Biggs, I'm sorry to interrupt you,
6 but just for planning purposes, how much longer do you think
7 that you have?

8 MR. BIGGS: Not -- not very much longer, Your
9 Honor.

10 THE COURT: All right. Mr. Meador, is Mr. Alex
11 going to be someone that you're going to call in your case in
12 chief?

13 MR. MEADOR: We do have him listed and we might --
14 Leslie is going to be handling him. We might be able to go
15 into our direct, possibly.

16 THE COURT: Well, if he's going to have to stay all
17 afternoon anyway we'll go ahead and break between the two
18 examinations.

19 MR. MEADOR: Right. Right.

20 THE COURT: That's basically my question.

21 MR. MEADOR: Yes.

22 MS. KUYKENDALL: Your Honor, I believe that Mr.
23 Alex may have testimony that's relevant after the remainder
24 of Mr. Biggs' witnesses testify, so . . .

25 THE COURT: Okay. Well, then we'll go ahead and

1 finish the direct and then break.

2 MR. BIGGS: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. BIGGS:

5 Q. I want to show you Petitioner's Exhibit 6, which is an
6 investigative report, as well as an e-mail on the following
7 page.

8 It's a two page document which we obtained through an
9 open records request from the Dallas custodian of records.

10 MR. BIGGS: And I don't think the respondent has
11 any challenge to the authenticity of the document.

12 Move to have that exhibit admitted.

13 THE WITNESS: This says 6.

14 MS. KUYKENDALL: Exhibit 6, we have no objection,
15 Your Honor.

16 THE COURT: Exhibit 6 is admitted.

17 BY MR. BIGGS:

18 Q. In that document one of the detectives, I believe it's
19 Detective Waller, received word from Alexandra Rodriguez, who
20 is Priscilla Rodriguez's sister, and she came forward in
21 April of 2007 with some information regarding this case.

22 And she said that she had some information and that Ms.
23 Rodriguez had witnessed Mr. Escamilla shoot Santos Gauna. Do
24 you recall having a conversation with anyone regarding this
25 matter, one of the -- anyone in law enforcement?

1 A. No, I don't recall the conversation. No, sir.

2 But let me finish reading the note, if you don't mind.

3 Q. Okay.

4 A. Okay.

5 Q. Do you recall that conversation at all?

6 A. I don't recall it, no, sir.

7 Q. You have no recollection of anyone coming forward about
8 this case in 2007?

9 A. That's not what I said.

10 In 2007, in 2006, and in 2005, and in 2004, the victim's
11 family would call me regularly and say people are contacting
12 me and the witnesses on this case, and it's the defendant's
13 mom, and trying to get them to change their story and what
14 can we do about that.

15 So people were constantly contacting me about this case.

16 And I can tell you, if I had this conversation with the
17 detective, that would not have surprised me, because it would
18 have been on the heels of Alexandra Rodriguez telling
19 Detective Berry that she wasn't nowhere around when the
20 shooting happened, she was in the back, and now she's coming
21 forward and saying she knew Licho committed this murder and
22 not Quintin, to me that smacked right of the defendant's mom
23 talking to her and having her call the police.

24 And this was happening on a monthly basis.

25 Q. Did you -- but you did not follow-up on that particular

1 witness coming forward; is that correct?

2 Alexandra Rodriguez.

3 A. That she said she had information that Li cho committed
4 the murder and not Quintin?

5 Q. Right.

6 A. No, sir.

7 MR. BIGGS: No further -- pass the witness.

8 THE COURT: We're going to go ahead and break for
9 lunch. Let's take a 45 to 50 minute break and we'll be ready
10 to start.

11 (Recess taken at 12:15.)

12 (Proceedings resumed at 1:00 o'clock.)

13 THE SECURITY OFFICER: All rise.

14 THE COURT: Please be seated.

15 You may proceed, Ms. Kuykendall.

16 MS. KUYKENDALL: Thank you.

17 Your Honor, may I approach the witness?

18 THE COURT: You may.

19 MS. KUYKENDALL: For the record, I've already shown
20 this to Mr. Biggs.

21 CROSS EXAMINATION

22 BY MS. KUYKENDALL:

23 Q. Take a look at that.

24 Mr. Alex, could you identify that document for me?

25 A. This would be the personal information sheet.

1 When a detective talks to a witness he will fill this
2 out. And it's regarding Alexandra or Alejandra Rodriguez,
3 who would have been somebody associated with this case.

4 Q. Okay. So the same Alexandra Rodriguez that Mr. Biggs
5 just asked you about before the break?

6 A. Yes, ma'am.

7 MS. KUYKENDALL: Your Honor, I would move to admit
8 this as State's 5 or Respondent's 5.

9 MR. BIGGS: No objection.

10 THE COURT: It is admitted.

11 BY MS. KUYKENDALL:

12 Q. Okay. Well, when you look at that document and going
13 back to Mr. Biggs' question about Alexandra's subsequent
14 phone call after trial --

15 A. Yes, ma'am.

16 Q. -- do you think that the Exhibit 5 that I just showed
17 you affected your decision whether to follow-up?

18 A. Well, I'm -- I'm sure it did.

19 Q. Could you go -- explain?

20 A. Yes, ma'am.

21 The -- I was aware that Alejandra Alexandra Rodriguez
22 was the sister of Priscilla Rodriguez and her statement in
23 this information sheet said that she was in the back and she
24 didn't see the shooting.

25 She went on further to say that she -- she heard Jesse

1 Baron, lives at the corner, say to someone else that they
2 were about to start shooting the place up and then he left
3 before the shooting. But she clearly stated that she wasn't
4 even in the front where the shooting was happening.

5 Q. And so when you received a call after trial was over
6 informing you that Alexandra Rodriguez had called saying
7 somehow that she had information about the case, what would
8 have gone through your mind?

9 A. Well, what would have gone through my mind -- what had
10 been -- what had been going through my mind for some times,
11 the -- the surviving complainant in this case, Mr. Martinez
12 and his wife, had called me on a number of occasions,
13 including some of the witnesses who had affidavits in this
14 case, and they would tell me that the defendant's mom was
15 calling them trying to get them to change their story. And
16 they wanted me to do something about it.

17 And I basically told them, you know, she's just doing
18 what a mother is going to do.

19 And I was convinced, based on what she said at the
20 beginning, was that she was not in the front, and she didn't
21 see what had happened, and that this was just more of the
22 same that was going on.

23 Q. Okay. And according to the date on that document when
24 did she give that statement?

25 A. This would have been the same night of the shooting.

1 And -- and let me just -- can -- can I say this?

2 I don't really and truly have a specific memory of
3 talking to somebody from the Dallas Police Department, but I
4 am -- I am saying to you what I believe happened. Okay?

5 I -- I'm not document -- I'm not doubting the document
6 that was shown to me that that happened, I just don't recall
7 it happening. But if it did happen, I would have probably
8 treated it the way I treated a couple of the other calls that
9 I got that was referencing that same kind of information.

10 Q. Okay. All right. Very good. Thank you.

11 All right. Well, going back, I'm going to try to take
12 this in mostly chronological order.

13 When you stated that all exculpatory evidence had been
14 turned over, was that statement true to the best of your
15 knowledge at that time?

16 A. To the best of my knowledge it would have been true at
17 that time.

18 Q. Okay. Did you -- I mean, you certainly were aware of
19 your duties under Brady.

20 A. Yes, ma'am.

21 Q. Okay. And understanding those duties, would you have --
22 would you have turned over anything exculpatory?

23 A. I would have turned over everything that was in my
24 possession that was exculpatory.

25 And -- and, you know, part of the problem with a case

1 like this is after the shooting happened people were calling
2 the police on anonymous calls, and all of that was in the
3 notebook, saying I saw this, I saw this person, and I -- I
4 think there's -- there's probably stuff in the -- in the
5 record about, you know, Licho did it. I think there was a
6 call that maybe Frank Hernandez was out there shooting.
7 There was lots of calls of people out there shooting.

8 So having the notebook there for him to look through,
9 anything that would have been important to his case -- I
10 wouldn't know if he was going to say Frank Hernandez did it
11 or Juan did it or Licho did it. I had a good feeling that --
12 that his theory was going to be Licho did it. But the -- the
13 notebook would have been there for anything that was
14 favorable to him that he was aware of.

15 Q. Okay. Let's see. To go back, we discussed work product
16 a little bit, about your understanding of what work product
17 is.

18 And when you were speaking about in terms of your file
19 and what you turned over, just to clarify, is it fair to say
20 that your sort of working definition of work product was
21 attorney work product rather than something that had maybe
22 been turned over by the police?

23 A. Yes, ma'am.

24 Q. Okay. And if I understood you correctly Ms.
25 Rodriguez -- Priscilla Rodriguez's affidavit, the one that's

1 been central to the testimony here, if I recall correctly you
2 are not absolutely sure that it was attached to the
3 prosecution report but you do believe that it very well could
4 have been.

5 A. And when you say "the affidavit" we're talking about --

6 Q. I'm sorry. We're talking about Priscilla Rodriguez's
7 affidavit that -- the photo ID of -- of Licho.

8 A. Okay. Yes, ma'am.

9 I mean, either one of these documents could have been
10 attached. I can't say for sure.

11 Q. Okay. And I know that you said that a lot of times that
12 depended on the detective working the case. And in this case
13 that was Detective Berry.

14 A. Yes, ma'am.

15 Q. What was his typical practice?

16 A. Detective Berry was very thorough, and he would have --
17 let's see, I think I had worked two other murder cases with
18 Detective Berry, and I don't -- I think that he would put
19 witness statements in his prosecution report. It would be --
20 when I got the folder it would be there, but it would not be
21 all of them. I mean, I wouldn't get -- obviously if I had
22 gotten all of them it -- my prosecution report would be this
23 big (indicating)

24 But the typical -- the typical murder case that I would
25 get, and from experience it was probably my second or third

1 one with Detective Berry, it would be a folder similar to
2 this one, in my hand, and it would have some statements from
3 witnesses, but probably not all of them.

4 Q. Okay. So would a report indicating that Licho was the
5 shooter and not Alonzo have been turned over?

6 A. Yes, ma'am.

7 Q. Okay. And we've talked about Priscilla a lot.
8 What was your plan?

9 I know you've touched on this, but if you could go over
10 it one more time.

11 What were you planning to do if Priscilla Rodriguez
12 testified?

13 A. Well, in the trial it was kind of interesting, because
14 the defense put on multiple witnesses that said that the
15 defendant, Quintin Alonzo, was not even in the front when the
16 shooting happened.

17 There was a Lucy Montoya who had basically said I was
18 looking at him, he was with me, we were in the back. And
19 that was their so-called star witness.

20 And there were other multiple witnesses that said, no,
21 he couldn't have been in the front where the shooting
22 happened.

23 And at some point I, in my mind, when I think back, I --
24 there was a lot of witnesses in the hall, many of whom had
25 never given statements before, like Lucy Montoya. She didn't

1 give a statement that night after it happened, never talked
2 to the police, never gave them a statement, wouldn't talk to
3 me.

4 And so it would have been easy if Priscilla Rodriguez
5 had taken the stand, she would have impeached every witness
6 he put on the stand who said that Quintin Alonzo wasn't even
7 in the front.

8 And I believe that if I was able to talk to her she
9 would have -- she would have admitted, yeah, I spoke to Mad
10 Dog, Mr. Guzman, before I looked at this lineup and he told
11 me that Licho was out there shooting. And I think in her
12 mind she thought she was helping. And she would have put the
13 defendant in the front, throwing bottles, which is what
14 Israel Martinez said he did before he pushed him.

15 Israel Martinez says the defendant threw a bottle at
16 him, he got angry and pushed him, and he, the defendant, came
17 up with a pistol less than five feet away and shot him and
18 his family.

19 And she would have -- she would have corroborated that.
20 She would have said Licho was out there shooting, I'm sure,
21 because --

22 MR. BIGGS: Your Honor, I'm going to object to the
23 speculation.

24 THE COURT: Sustained.

25 BY MS. KUYKENDALL:

1 Q. Okay. Well, are there -- is it a fair statement to say
2 that there are many points that you could have brought out,
3 not only on cross-examination, that would have impeached
4 other parts of Mr. Hays' case?

5 A. I think it would have impeached his whole case.

6 His theory of his case was the defendant was nowhere
7 near the shooting. And I do believe it would have -- her
8 testimony would have been consistent with the other witnesses
9 who said they saw Licho shooting from behind a Cadillac, but
10 that would have been after the victim and his wife and his
11 son had been shot.

12 Q. And are those points that you would have brought out in
13 your closing argument?

14 A. Yes, ma'am.

15 MS. KUYKENDALL: Okay. Thank you.

16 Your Honor, may I have a moment?

17 THE COURT: You may.

18 MS. KUYKENDALL: Your Honor, I pass the witness.

19 THE COURT: Any redirect?

20 MR. BIGGS: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BIGGS:

23 Q. Mr. Alex, you would agree that if Carl Hays had chosen
24 to call Priscilla Rodriguez to the stand he might not have
25 chosen to call the other witnesses that he did call?

1 A. I would agree that it would have been a choice. It
2 would have been a choice by a lawyer who was trying to figure
3 out what the truth was. And he would have had to have made a
4 choice.

5 Q. Or not only make a choice what the truth was but what
6 would be the best case for his client?

7 A. Well, as a prosecutor I think my answer would be figure
8 out what the truth was, not what was best for the case.

9 Q. But you -- you would agree that a -- an end goal of a
10 defense lawyer and end goal of a prosecutor are two very
11 different things.

12 Isn't the goal of a prosecutor that justice be done?

13 A. Yes, sir.

14 Q. And the goal of a defense attorney is to do whatever is
15 in the best interest of his client?

16 A. I would disagree with that.

17 When you say "whatever" what do you mean?

18 Does that mean putting on testimony that's not true?

19 Q. I apologize. No.

20 I qualify the statement, besides from knowingly putting
21 forth false testimony, isn't a defense attorney entitled to
22 present the best case for his client?

23 A. I would -- I would agree with that, yes, sir.

24 Q. And in the affidavit that you were referencing, I
25 believe it's Exhibit 7 --

1 A. Yes, sir.

2 Q. -- does Priscilla Rodriguez actually say that Quintin
3 was in the front yard?

4 A. In Defendant's Exhibit 7 she doesn't mention Quintin by
5 name at all. She describes --

6 Q. Oh, I'm sorry. I'm sorry. Exhibit 1. I apologize.

7 A. Okay. Defendant's Exhibit 1?

8 She says -- she pointed at Alonzo's photo and says him,
9 he was throwing bottles before the shooting started, and
10 then, him, he was -- okay, and then identified the photo of
11 Licho.

12 So no.

13 She said that he was throwing bottles. And my point was
14 that's exactly what the victim said happened. He said the
15 guy threw a bottle at me, I got mad, I pushed him, and that's
16 when that same guy came up and shot me.

17 Q. But she never said he was in the front yard throwing
18 bottles?

19 A. Well, nobody in the whole trial said that anybody was
20 bottles in the back of the yard right before the shooting and
21 that's why the shooting happened.

22 MR. BIGGS: Your Honor, I would object as
23 nonresponsive.

24 THE COURT: Answer the question, Mr. Alex.

25 BY MR. BIGGS:

1 Q. That report she never says -- Priscilla Rodriguez never
2 says that he was in the front yard?

3 A. That's correct.

4 Q. And when you testified on cross, I guess, you said that
5 this document would have been turned over, but I believe on
6 direct you said that it -- it would have been turned over had
7 you been aware of it. Is that correct?

8 A. I'm sorry?

9 Q. If -- is it possible that you were never aware of that
10 document?

11 A. Which document are you speaking of?

12 Q. I'm talking about Exhibit 1.

13 A. Okay. The one in which she says that Licho shot Santos?
14 That's what you're asking me?

15 Q. Yes.

16 A. I think what I told you on direct was I was confident
17 that this was turned over to Mr. Hays.

18 Q. Would you agree that you're inferring from the
19 circumstances and not testifying to a direct recollection of
20 turning that document over?

21 A. I would agree with that, yes, sir.

22 Q. Do you agree you also said on direct that you didn't
23 regard Priscilla Rodriguez as particularly a credible
24 witness?

25 A. That's correct.

1 Q. And if she's not a credible witness is her testimony in
2 your view necessarily exculpatory?

3 A. I'm sorry?

4 Q. Is her -- is her testimony exculpatory?

5 A. This Defense Exhibit 1, as written, is exculpatory, yes,
6 sir. If that's what you're asking me.

7 Q. And that would have been something that you would have
8 considered to be exculpatory Brady material?

9 A. Yes, sir.

10 Q. And is it your testimony that you believe that document
11 was not in the -- well, let me rephrase.

12 Is it your testimony you believe that document was
13 turned over to Carl Hays separate and apart from allowing him
14 to look at the investigator's notebook the day of trial?

15 That was turned over --

16 A. Yes, sir.

17 Q. And it wasn't a matter of just allowing him to see
18 the -- the notebook?

19 A. No, sir. To the best of my recollection. Yes, sir.

20 MR. BIGGS: No further questions.

21 THE COURT: Any recross?

22 MS. KUYKENDALL: Just a couple, Your Honor.

23 RECROSS EXAMINATION

24 BY MS. KUYKENDALL:

25 Q. From your perspective as the prosecutor on the case

1 would you have preferred Mr. Hays to present a case with
2 Alonzo throwing bottles out front or placing Alonzo in
3 testimony -- witnesses who say he was out front throwing
4 bottles or in the back hiding, nowhere near the -- the scene
5 of the shooting?

6 A. The case would have been simpler for me if Priscilla
7 Rodriguez was the only person who testified for the defense,
8 because at that point it would have been her word in a
9 dark -- in a very dimly lit place versus the word of a man
10 who was five feet from the shooter who looked the guy in the
11 eye.

12 And it would have been easier for me, because the first
13 statement that she gave she never talked about Licho by name
14 or knowing him. And if she saw Licho shoot the complainant
15 she would have said that on the night and not two weeks later
16 after listening to the rumors and talking to Mr. Guzman.
17 That would have been an easier case for me to try, yes,
18 ma'am.

19 Q. Okay. But nonetheless, her -- from what we understand
20 her proposed testimony would have been, she would have placed
21 him in the front throwing bottles?

22 A. That's what I -- that's what I take from looking at the
23 totality of the case and what I know about the facts of the
24 case, yes, ma'am.

25 Q. Okay. Was there other -- you know, was there other

1 testimony at trial that if believed would have placed all the
2 bottle throwing at the gate, where the shooting occurred?

3 A. That's what the testimony at the trial was, is that --
4 that's what precipitated -- it was -- it was the throwing of
5 gang signs. The defendant and his group was yelling Vagos.
6 The other guys were yelling Ledbetter. They were being put
7 out because there was going to be a fight. And the bottle
8 was thrown at Mr. Martinez because he was escorting the
9 defendant out. And after he threw the bottle, that's when
10 Mr. Martinez pushed him and then got shot.

11 So the bottle throwing in the testimony that I was aware
12 of from reading everything and knowing the case was in the
13 front directed at Mr. Martinez in the yard.

14 Q. Okay. So to your knowledge there was no testimony
15 placing any kind of bottle throwing anywhere else around the
16 scene of the shooting?

17 A. Yes, ma'am.

18 MS. KUYKENDALL: Okay. Thank you.

19 I pass the witness.

20 MR. BIGGS: Nothing further, Your Honor.

21 THE COURT: All right. And I believe the State
22 wanted to have Mr. Alex remain?

23 MS. KUYKENDALL: Yes. At least be available on
24 call, if you would like to go back to your office.

25 THE WITNESS: Is that okay?

1 THE COURT: That's fine, Mr. Alex, as long as
2 you're going to be there where we can get you here quickly.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: You may call your next witness, Mr.
5 Biggs.

6 MR. BIGGS: Your Honor, we'll call Julie Vazquez.

7 THE COURT: Ms. Vazquez, you were in the group that
8 was sworn this morning, correct?

9 THE WITNESS: Yes.

10 THE COURT: Please be seated and please speak up
11 into the microphone.

12 MR. BIGGS: Your Honor, if you like I can clear
13 some of that stuff off there -- the ledge.

14 THE COURT: It's up to you. If you think your
15 witness will need it, that's --

16 MR. BIGGS: No.

17 DIRECT EXAMINATION

18 BY MR. BIGGS:

19 Q. Hello, Ms. Vazquez.

20 A. Hello.

21 Q. Please state your name for the record.

22 A. Julie Vazquez.

23 Q. How are you related to Quintin?

24 A. I'm his mother.

25 Q. Did you retain Carl Hays as his attorney to represent

1 him --

2 A. Yes, I did.

3 Q. -- when he got arrested?

4 A. Yes.

5 Q. Do you remember about when that occurred?

6 A. Shortly after -- I'd say within maybe a couple -- couple
7 of months.

8 THE COURT: I'm going to need you to speak up a
9 little bit.

10 THE WITNESS: Around a couple of months.

11 BY MR. BIGGS:

12 Q. Did you sign a contract with Mr. Hays?

13 A. I don't recall. I believe making an agreement but I
14 don't remember there being a contract.

15 Q. Did you pay him some kind of retainer fee?

16 A. Yes.

17 Q. And how was your relationship with Mr. Hays at the
18 outset of your -- of his representation of Mr. Alonzo?

19 A. I'm sorry?

20 Q. At the beginning.

21 At the beginning, how was the relationship at the
22 beginning --

23 A. Oh, it was fine.

24 Q. -- of the case?

25 A. It was fine. He communicated with me. He would answer

1 my phone callings. I talked to him, quite often.

2 Q. And how far along was it before things began to sour a
3 little bit?

4 A. Well, I was paying Mr. Hays my -- my -- every pay
5 period. I did fundraisers to raise money to also continue to
6 pay my lawyer fees.

7 I know it was I would say maybe almost a year as I was
8 paying him and -- and -- and the trial kept getting
9 postponed, he would -- he wouldn't return my phone calls as
10 often. I seemed to have -- really having a hard time
11 reaching him and him calling me back. Just seemed to me that
12 he was losing interest.

13 Q. Did you fall a little behind in your payments to Mr.
14 Hays?

15 A. Yes, I did.

16 Q. And did you feel he became less interested in the case
17 as you fell behind in the payments?

18 A. Absolutely.

19 Q. Can you testify, about when did you fall behind in your
20 payments?

21 A. Actually, it was probably a year -- I know we had a -- a
22 trial date and at that time it was postponed, and so I had
23 to -- I had six children to take care of. I was a single
24 parent. So he was okay me paying him a certain amount every
25 pay period. It just got really tough and got behind.

1 He mentioned it to me once, about him needing some
2 money.

3 And I also -- I remember borrowing some money from my
4 parents to try to give him some more money. And it was
5 probably, I want to say maybe six months to a year right
6 before his trial.

7 Q. Did Mr. Hays ever provide you with any documents related
8 to Mr. Alonzo's case?

9 A. The only --

10 Q. Prior -- prior to the trial?

11 A. Yes. The only documents that he gave me were
12 affidavits, because I -- I wanted to help and try to find
13 some of the witnesses and because I knew some of the people
14 that were there, he gave me the affidavits that he had and
15 told me I could make copies. So I made copies of them.

16 Q. Prior to Mr. Hays hiring Mr. Rosa, were you aware of
17 whether Mr. Hays had anyone else working on the case to
18 investigate?

19 A. No. No. I was not aware. I just knew that he told me
20 that his daughter was helping him -- helping him with the
21 case.

22 MR. MEADOR: Your Honor, I object to hearsay.

23 THE COURT: Sustained.

24 BY MR. BIGGS:

25 Q. Did you --

1 THE COURT: Wait a minute. Wait a minute. I'm
2 sorry. I didn't give you an opportunity to respond.

3 MR. BIGGS: I'll withdraw the question.

4 THE COURT: Okay.

5 BY MR. BIGGS:

6 Q. Did you -- did you receive any -- did you conduct your
7 own investigation of this case?

8 A. Yes, I did.

9 Q. And did you base that on the affidavits you received
10 or -- or other information or --

11 A. I based that on not just the affidavits but the people
12 that I knew that were at that party. And I took it upon
13 myself to try to do everything I could to get witnesses.

14 Q. Was Carl Hays relying on you to -- to find witnesses for
15 him?

16 A. Yes. Yes.

17 Q. And did you have occasion to meet with Carl Hays on a
18 Saturday afternoon at his office?

19 A. Yes. He asked me to get the witnesses that I knew, the
20 witnesses that I was able to gather, and meet at his office
21 on a Saturday morning and -- so that he could talk to them.

22 Q. And were you aware of whether he was doing any other
23 independent investigation of your case?

24 A. No.

25 Q. And what happened when -- what happened that Saturday?

1 Did any of the witnesses come?

2 A. A couple of witnesses came that Saturday morning.

3 Q. And after that -- was that once or twice?

4 How many times did that occur?

5 A. One time.

6 Q. And then did Mr. Hays hire Investigator Rosa?

7 A. Yes, he did.

8 Q. And did you work with Investigator Rosa?

9 A. Yes, I did.

10 Q. What was the nature of your relationship with
11 Investigator Rosa?

12 A. My relationship like -- I met him -- Mr. Hays introduced
13 me to Mr. Rosa and told me that he had gotten an
14 investigator.

15 And at that point Mr. Rosa called me and we got
16 together. And I had -- I had copies of affidavits, and I
17 helped Mr. Rosa find -- get -- get ahold of some of these
18 people.

19 Q. Did Mr. Rosa -- was he undertaking -- was he relying on
20 you to bring witnesses to him as well?

21 A. Yes.

22 Q. Were there any witnesses that Detective Rosa found that
23 you didn't bring to his attention?

24 A. No.

25 Q. To your knowledge?

1 A. To my knowledge, no.

2 Q. And would you repeat, what were the documents you
3 obtained from Carl Hays prior to the trial?

4 A. The only documents that I got from Mr. Hays were the
5 affidavits.

6 Q. And shifting gears toward -- to after the trial.

7 Did you ask Mr. Hays at some point for a copy of his
8 trial file?

9 A. Yes, I did.

10 Q. And how did you -- how did you ask him?

11 Did you call him?

12 A. I called Mr. Hays and I asked him if I could get a copy
13 of Quintin's file. And he told me to give him a couple of
14 days, two or three days, because he couldn't get it to me,
15 because he had to make copies because those were his original
16 files.

17 And so I waited about three days. And I called him and
18 he said, yeah, you can come by the office and pick it up.

19 And so I went by the office. He doesn't -- he didn't
20 have a secretary at that point, because he told me what time
21 would be a good time to go pick 'em up, when he would be
22 there, and I went and picked 'em up.

23 Q. So did you ever lay eyes on the original file?

24 A. No, I did not.

25 Q. You never saw the original file?

1 A. No, I didn't.

2 Q. And did you pick -- pick up the file?

3 A. The copies that he had made, yes, I did.

4 Q. Did you review that file?

5 Did you look through all the documents in that file?

6 A. I looked through the -- through the documents, yes, I
7 did.

8 Q. I'd like to direct your attention to Petitioner's
9 Exhibit 1, which I'll --

10 MR. BIGGS: If I may approach, Your Honor?

11 THE COURT: You may.

12 MR. BIGGS: I apologize for that.

13 May I approach again, Your Honor?

14 BY MR. BIGGS:

15 Q. Ms. Vazquez, please take a look at that document. That
16 is a police report written by Detective Berry in which he
17 recounts a interview with Priscilla Rodriguez, where
18 Priscilla Rodriguez identified Licho Escamilla as the -- as
19 the shooter of Mr. Gauna, Santos Gauna.

20 Have you had a chance to look it over?

21 A. This one here?

22 Q. Yes.

23 A. No, I don't recall seeing this one here. I recall
24 seeing an affidavit that's something similar, but not this --
25 not this.

1 Q. So you don't recall seeing that document in the file?

2 A. No, I don't.

3 Q. But you do recall seeing an affidavit of Ms.
4 Rodriguez?

5 A. Yes. Because it was -- it was just in a different form.

6 MR. BIGGS: Your Honor, may I approach again?

7 THE COURT: You may.

8 MR. BIGGS: I'm sorry, Your Honor. I think our
9 witness might have taken a few of our exhibits on accident.

10 THE COURT: So what you showed her was not an
11 exhibit that has been admitted into evidence but a copy of an
12 exhibit that's been entered into evidence?

13 MR. BIGGS: Yes. Yes, Your Honor.

14 THE COURT: Was it an exact copy?

15 MR. BIGGS: Yes. Yes, Your Honor.

16 MR. MEADOR: It was, Your Honor.

17 MR. BIGGS: Your Honor, this is a copy of an
18 exhibit I had tendered to the government prior to this
19 proceeding. I believe it has already been admitted into
20 evidence.

21 If I may approach?

22 THE COURT: You may.

23 I don't have a Petitioner's 7.

24 MR. BIGGS: You don't have a 7?

25 THE COURT: No.

1 MR. BIGGS: Move to admit Exhibit 7.

2 I don't think there's any dispute as to authenticity.

3 We obtained this from an open records request of the
4 Dallas Police Department. And it's an affidavit from the
5 night of the shooting from Priscilla Rodriguez given to a
6 police officer.

7 THE COURT: Mr. Meador, any objection to admission
8 of number 7?

9 MR. MEADOR: No, Your Honor.

10 THE COURT: Number 7 is admitted.

11 BY MR. BIGGS:

12 Q. Ms. Vazquez, have you had a chance to review that
13 exhibit?

14 A. Yes.

15 Q. Exhibit 7?

16 Does that look like the document that was in the file?

17 A. No. It would -- the document was formatted different.
18 It wasn't like this at all.

19 Q. And when you went to -- let me ask you.

20 Do you know who Bill Cox is?

21 A. Yes, I do.

22 Q. And who is Bill Cox?

23 A. Bill Cox is the attorney that we retained to do my son's
24 writ.

25 Q. And how did you come to find Mr. Cox?

1 A. Through a friend.

2 Q. Referred through a friend?

3 A. Um-hum.

4 Q. And did you ever meet with Mr. Cox?

5 A. Yes, I did.

6 Q. Did you provide him a copy of the file you had obtained
7 from Carl Hays?

8 A. Yes, I did.

9 Q. Did you give him your copy or did you make copies of
10 that -- of the copy you -- in your possession?

11 A. I gave him what I had gotten from Carl Hays.

12 Q. Did you also make an open records request of Dallas
13 Police Department?

14 A. Yes, I did.

15 MR. BIGGS: Your Honor, if I may approach?

16 THE COURT: You may.

17 BY MR. BIGGS:

18 Q. I'm going to show you Petitioner's Exhibit 10, which
19 appears to be an open records request from the Dallas Police
20 Department.

21 Is this -- is that your signature right there at the
22 bottom?

23 A. Yes, it is.

24 Q. Do you recall making that request?

25 A. Yes.

1 MR. BIGGS: Your Honor, I move to admit
2 Petitioner's Exhibit 10 into evidence.

3 MR. MEADOR: No objection, Your Honor.

4 THE COURT: Number 10 is admitted.

5 BY MR. BIGGS:

6 Q. And would you please relay to the court what -- what you
7 exactly requested on that document.

8 What did you request on the document?

9 A. On here?

10 Q. Um-hum.

11 A. The reports.

12 I don't recall the -- exactly what it was, but I knew
13 that whatever I was requesting I needed everything that they
14 had.

15 Q. So what were the exact words you used in asking for --

16 A. When I went to ask for the -- for the records I asked --
17 I wanted -- I needed everything, from what happened at the
18 police report to what happened on -- at the scene. I wanted
19 all the documents.

20 Q. And what are the exact words that you wrote down on that
21 document, right in front of you?

22 A. I would like complete report.

23 Q. For case --

24 A. For case numbers, because these were the case numbers
25 that when I asked -- when I -- because I didn't know about

1 case numbers, and when I went to the police department I gave
2 them the incident, the date that it happened, and so they're
3 the ones that gave -- that's why I wrote these numbers
4 down.

5 Q. How many case numbers are there?

6 A. There was three.

7 Q. And how many charges was --

8 A. Three.

9 Q. And did you ultimately receive documents from the Dallas
10 Police Department?

11 A. Yes, I did.

12 MR. BIGGS: Your Honor, if I may approach.

13 THE COURT: You may.

14 BY MR. BIGGS:

15 Q. I'm going to show you an invoice receipt from the Dallas
16 Police Department which has already been tendered to
17 respondent.

18 Is that your signature there below?

19 A. Yes.

20 Q. And the date is December 3rd, 2002?

21 A. Um-hum.

22 Q. Does that appear to be the invoice receipt that came
23 with the records you obtained?

24 A. Yes.

25 Q. Did you sign that receipt --

1 A. Yes, I did.

2 Q. -- when you picked up the documents?

3 A. Yes, I did.

4 MR. BIGGS: Your Honor, I would move to admit
5 Petitioner's Exhibit 11 into evidence.

6 MR. MEADOR: No objection, Your Honor.

7 THE COURT: Number 11 is admitted.

8 BY MR. BIGGS:

9 Q. Ms. Vazquez, how many documents does that receipt say
10 that you received?

11 A. It says I received two documents, the arrest and the
12 offense report.

13 Q. And -- and how many pages did -- on -- on each report?

14 A. On the arrest report it was 19 pages and on the offense
15 report it was 23.

16 Q. And how much did -- did you have to pay for that?

17 A. \$4.20.

18 Q. Were those records given to Mr. Cox as well?

19 A. Yes.

20 Q. Was everything -- and what was the date on that records
21 request?

22 A. On the records request was --

23 Q. Or on the receipt of records.

24 A. Oh, on the receipt.

25 12/3/02.

1 Q. And do you recall when you obtained Mr. Cox to represent
2 your son on a state habeas petition?

3 A. I don't recall the exact date. I don't recall the exact
4 date.

5 Q. And when you retained Mr. Cox were there any documents
6 in your possession pertaining to your son's case that you did
7 not provide to Mr. Cox?

8 A. No.

9 Q. You gave him everything?

10 A. I gave him everything that -- that I had, that was given
11 to me.

12 Q. And after the petition was filed and denied did you
13 re -- reacquire those files?

14 A. No.

15 Q. You did not?

16 You did not pick the files up?

17 A. Well, yeah I got them. I picked them up after he
18 finished, yeah.

19 Q. And did you pick up everything?

20 A. I -- I assumed it was everything, because I didn't go
21 through it over again, because I was thinking that he had
22 given everything back to me.

23 Q. Was it your understanding -- did he -- did he provide
24 you the same documents you provided him or did he give you
25 copies?

1 Did you get back what you gave him?

2 A. It appeared that he -- that I got back what I had given
3 him.

4 Q. Okay. Did you also make an open records request of
5 Detective Berry's personnel file?

6 A. Yes, I did.

7 Q. And --

8 MR. BIGGS: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MR. BIGGS:

11 Q. Ms. Vazquez, I'm showing you Exhibits 12 and 13, if you
12 would take a look at each Exhibit. Exhibit 12 is a copy of
13 an open records request that was made to the Dallas Police
14 Department regarding Detective Berry's personnel file.

15 And who's that signature right there?

16 A. That's my sister.

17 Q. It's your sister?

18 A. Um-hum.

19 Q. And would you describe Exhibit 13?

20 Is that -- is that an invoice receipt --

21 A. That's an invoice receipt --

22 Q. -- for --

23 A. -- for Detective Berry's --

24 Q. And is your -- is your signature at the bottom of that?

25 A. Yes, it is.

1 MR. BIGGS: Your Honor, I would move to admit
2 Petitioner's Exhibits 12 and 13 into evidence.

3 MR. MEADOR: No objection, Your Honor.

4 THE COURT: Admitted.

5 BY MR. BIGGS:

6 Q. What date did you receive these documents?

7 A. May 5th, 2004.

8 Q. And how many pages is that document?

9 A. Personnel time, four pages.

10 Machine copies was 648.

11 And one affidavit.

12 Q. And did you review that -- those documents as well?

13 A. Yes.

14 Q. And was Exhibit -- what we've shown you as Exhibit 1,
15 the Detective Berry's report, was that in those documents?

16 A. I don't recall.

17 Q. You don't recall?

18 A. I don't recall if they were in there.

19 Q. Did you ever remember seeing -- or you -- do you -- are
20 you confused about which exhibits --

21 A. Yeah, I'm -- I'm thinking this is it here; is that
22 correct?

23 Q. Yes. Yes. Yes.

24 A. No --

25 Q. Do you recall --

1 A. -- that was not --

2 Q. -- seeing that document?

3 A. No.

4 Q. When was the first time you laid eyes on that document?

5 A. The document --

6 Q. Exhibit 1 that -- that -- that you just had in your
7 hand.

8 A. Oh, I've not seen it until now.

9 Q. Did we have a meeting a few days ago?

10 A. Oh, yeah. Yeah.

11 As far as this document here?

12 Q. Yes.

13 A. Yeah, you showed it to me.

14 Q. And --

15 MR. MEADOR: Pardon me, Your Honor.

16 Can -- can you identify the exhibit that you're
17 referring to, just for the record?

18 MR. BIGGS: Exhibit 1.

19 MR. MEADOR: Thank you.

20 THE WITNESS: I don't know -- oh, I see the numbers
21 now. I didn't realize that. They're at the bottom.

22 MR. BIGGS: I apologize for that.

23 BY MR. BIGGS:

24 Q. Do you -- do you recall reviewing Exhibit 1 with me last
25 week?

1 A. Yes.

2 Q. And prior to that time do you remember having seen that
3 document?

4 A. No.

5 MR. BIGGS: Pass the witness.

6 THE COURT: Cross-examination?

7 MR. MEADOR: Yes, Your Honor.

8 CROSS EXAMINATION

9 BY MR. MEADOR:

10 Q. Ms. Vazquez, my name is John Meador.

11 A. Yes.

12 Q. Let me ask you, so you would agree that Carl Hays
13 offered to open -- or did open his office at least one
14 weekend -- what was your testimony on -- as far as meeting
15 him at his office and bringing witnesses down?

16 Did he open his office on the weekends for you?

17 A. He did it one time.

18 Q. And do you recall the witnesses that -- the names of the
19 witnesses that you brought down?

20 I think you mentioned that you said you brought a couple
21 of witnesses?

22 A. Yes.

23 Q. And who were they?

24 A. Antonio Garza, and -- I believe it was Antonio Garza and
25 Lucy Montoya.

1 Q. And they both testified at trial, right? Correct?

2 A. I believe so. I wasn't in there, so I can't actually
3 say that.

4 Q. Now, you said you -- you worked with John Rosa. Did you
5 ever ride around with him interviewing witnesses, going from
6 house to house talking to folks?

7 A. Yes, I did, because that's the only time that he would
8 go talk to people.

9 He would call me and tell me, you know, just let me know
10 when's a good time, when you get off of work we can go visit
11 some of these people. And, yeah, I rode around with him.

12 Q. And how often did you do that, do you recall?

13 A. Not that often.

14 Q. But more than one time you think?

15 A. More than once.

16 Q. Now, you mentioned that you had given names to Carl Hays
17 of witnesses and whatnot?

18 A. Yes.

19 Q. Do you also recall giving an affidavit -- or writing an
20 affidavit in -- in state court?

21 A. I don't recall.

22 MR. MEADOR: Your Honor, may I approach?

23 THE COURT: You may.

24 MR. MEADOR: And just to be clear, I'm referring to
25 my tab 10.

1 Could you collect some of these? And maybe we won't
2 have any more witnesses walking off.

3 BY MR. MEADOR:

4 Q. Could you identify that document, just how it's titled
5 at the top?

6 A. Affidavit of Julie A. Vazquez.

7 Q. Would that be you?

8 A. That's me.

9 Q. Do you recall that now?

10 A. Recall this form?

11 Q. Do you recall writing that?

12 A. I recall not writing it but typing it up.

13 Q. Yeah. Well, I mean, that is your affidavit?

14 A. Yeah.

15 Q. Do you want to go to the last page and make sure that's
16 your signature?

17 A. Yeah. Let me look at that.

18 Yes, that's my signature.

19 Q. At one point in your affidavit you said that you had
20 spoken with a potential witness and that you actually -- let
21 me find the quote exactly here.

22 I think it was that -- oh, you said, "I found out later
23 that a young girl that went to my church was at the party. I
24 went to see her, and it was obvious she was devastated
25 because her friend was killed. I asked her if she saw QT.

1 And she said no, I didn't know he was there. At that point I
2 told her that he was being accused of the shooting. I told
3 her that someone would be coming to get a statement from her
4 and she said that was fine. Carl Hays, my son's trial
5 attorney never subpoenaed her.

6 What -- do you remember what her name was?

7 A. Priscilla Rodriguez.

8 Q. It was Priscilla?

9 A. Um-hum.

10 Q. And what do you think at that time -- what did she tell
11 you?

12 A. Well, when I -- when I went to see her she was obviously
13 severely depressed. She was in a dark room, curled up,
14 crying. Grandmother had -- had --

15 Q. Well, let me -- at the time that you saw her at church,
16 what did she tell you?

17 A. I didn't see her at church. I saw her at her house.

18 Q. Okay. I found out that the young lady --

19 A. I know her from my church.

20 Q. Okay. Beg your pardon. Go ahead. I'm sorry.

21 A. Okay.

22 Q. Go ahead, I'm sorry.

23 A. At that time when I went to see her -- because I was
24 shocked that -- that Quintin was being accused, and I went to
25 see her and she was in her room. The grandmother let me in

1 and -- because we know the family. I've known them -- we've
2 known them for a long time.

3 Went in her room, it was dark and she had a big shirt on
4 with Santos Gauna's picture on it. And I talked to her and I
5 asked her, you know, what happened.

6 And she was crying. And she said that -- that they
7 had -- that he was shot. And I asked her, I said do you know
8 who did it. And I said -- and she said -- she did tell me it
9 was Licho Escamilla.

10 And I said, well, okay, somebody is going to come and
11 talk to you, because, you know, Quintin is being accused.
12 And I said did you see him at the party that night.

13 And she was -- she said, no, I didn't see him.

14 And she agreed that she would -- when she spoke to me
15 that she would talk to somebody.

16 And then that was it when I left.

17 Q. And were you by yourself or was --

18 A. I was by myself.

19 Q. Okay. Now, you're also aware, you've had a chance to
20 look at the different exhibits, that she has provided a
21 police statement and affidavit and whatnot?

22 A. Yeah.

23 Q. And she said that she saw Quintin throwing bottles?

24 A. Yeah. I know. I was -- I didn't understand that.

25 Q. So it's kind of curious --

1 A. I had to understand that when somebody dies in front of
2 you it's devastating and sometimes you can just -- I mean, I
3 know how that can be. And when she said that, and then I see
4 that statement, I didn't know what happened, was she
5 distraught, or what, or maybe she wasn't really paying
6 attention to me, or what, so I can't speak on her behalf.

7 Q. Did she indicate to you at the time that she had spoken
8 with the police?

9 A. She did tell me that she went to the police department.

10 Q. And gave a statement?

11 A. And gave a statement.

12 Q. So you just can't explain why her -- so you said you
13 couldn't really explain why her statement to you in the dark
14 room when she was crying was different than the one that she
15 actually put in the affidavit?

16 A. Yeah.

17 Q. So is it -- is it your contention that Quintin wasn't at
18 the party at all?

19 A. I -- what do you mean?

20 Repeat that again.

21 Is it my what?

22 Q. Is it your -- did Quintin ever tell you he was at the
23 party?

24 A. Later, yeah. Not at the time, before the party, he
25 didn't -- Quintin didn't live with me. I didn't find out

1 until the next day.

2 Q. The next day after the shooting?

3 A. The next day after the shooting.

4 Q. Okay. So it was that weekend. But it wasn't -- it
5 wasn't a long time that he told you?

6 A. No.

7 Q. So when you talked to Priscilla, did that not seem odd
8 to you that she would have said that she didn't remember
9 seeing him there?

10 A. No, it didn't seem odd. Because if there were a lot of
11 people there and it was 1:00 o'clock in the morning, and
12 there were people coming and going to a party, sometimes you
13 don't see people there. Sometimes, you know -- I mean,
14 they're just not out in the open where everybody could see
15 them.

16 Q. So you kind of believe her -- both her statements, that
17 she saw him and that she didn't see him; is that what you're
18 saying?

19 A. Yeah.

20 Q. You believe both of her statements?

21 A. Right. Maybe she didn't see him in the beginning. I
22 don't know.

23 MR. MEADOR: Excuse me, Your Honor.

24 BY MR. MEADOR:

25 Q. Now, you also said you also worked with William Cox, he

1 was the attorney -- did you hire him to work on the state
2 habeas?

3 A. Yes.

4 Q. Okay. Now, and the documents that he had were provided
5 by you; is that correct?

6 A. Yes.

7 Q. And the documents you had were provided by Carl Hays?

8 A. Yes.

9 Q. Now, is there any way of knowing that everything that
10 you got from Carl Hays was everything that was in the file?

11 A. No.

12 Q. He just represented that --

13 A. Yes.

14 Q. It was a copy?

15 A. Yes.

16 MR. MEADOR: As far as the open records request --
17 are those still up there? The exhibits?

18 MR. BIGGS: Which ones?

19 MR. MEADOR: 10, 11, 12, and 13. Have those been
20 tendered to the court?

21 THE COURT: I have 10, 11, 12, and 13 as being
22 admitted.

23 BY MR. MEADOR:

24 Q. I just have a question.

25 On Exhibits 11 and 13 where you actually received the

1 documents and it says -- let me back up.

2 In Exhibit 10 you made a request for all three cases,
3 right, there were three case numbers?

4 A. Right.

5 Q. And then you got documents, like, for example, Exhibit
6 11, that sort of indicated that you didn't feel like you got
7 as much as you asked for; is that right?

8 A. I don't remember what the document -- what 11 and --
9 what you're telling me. I don't know what --

10 Q. It was the receipts.

11 MR. MEADOR: Thank you.

12 Your Honor, may I approach?

13 THE COURT: You may.

14 BY MR. MEADOR:

15 Q. I'm showing you Exhibit -- Defendant's Exhibit 11, which
16 is the receipt and then 13 is the similar -- it's just --
17 it's just more.

18 A. Right.

19 Q. But you didn't -- can you tell by looking at this, just
20 the bare bones receipts, that your request was -- let me
21 rephrase that.

22 How do you know what you got wasn't responsive to what
23 you asked for?

24 I mean, do you feel like you -- you got what you asked
25 for?

1 A. No, I really didn't.

2 Q. So what did you do at that time?

3 Did you ask for them to reconsider, to look for
4 something else?

5 A. No, I didn't. Because I felt like because of where
6 I'm -- who I'm asking the documents from that they're going
7 to give me everything they have.

8 Q. But you don't know that they didn't?

9 A. I don't know that they didn't.

10 Q. You just suspect that they didn't --

11 A. I just felt like there was some -- something just
12 didn't -- I wasn't getting everything. I can't explain it,
13 but that's how I felt.

14 Q. And it just didn't seem like it was enough?

15 A. It just didn't seem like it was enough.

16 Q. But you didn't go back and ask them for -- or just raise
17 the question, hey, is there more sort of thing?

18 A. No.

19 Q. So are you alleging that -- well --

20 MR. MEADOR: I'll pass the witness.

21 MR. BIGGS: Nothing further, Your Honor.

22 THE COURT: May Ms. Vazquez be excused?

23 MR. BIGGS: Yes.

24 THE COURT: Ms. Vazquez, you are free to leave.

25 THE WITNESS: Thank you.

1 THE COURT: Thank you.

2 Mr. Biggs, do you have another witness?

3 MR. BIGGS: Your Honor, I just have a brief
4 request. My client has informed me that he really needs to
5 use the restroom, if we can possibly take a five minute
6 recess.

7 THE COURT: Is that all right with our security?
8 We'll take a five minute -- let's take a ten minute
9 recess.

10 THE SECURITY OFFICER: All rise.

11 (Recess taken at 2:00 o'clock.)

12 (Proceedings resumed at 2:10.)

13 THE SECURITY OFFICER: All rise.

14 THE COURT: Please be seated.

15 Your next witness.

16 MR. BIGGS: Petitioner calls Joe Saal to the
17 stand.

18 THE COURT: Just to verify, you were in the group
19 that was sworn this morning; is that correct?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Please speak up into the microphone.

22 DIRECT EXAMINATION

23 BY MR. BIGGS:

24 Q. Mr. Saal, will you please state your name for the
25 record.

1 A. Joe Saal, S-a-a-l.

2 Q. And where do you work?

3 A. I'm an investigator with the Federal Public Defender's
4 Office here in Dallas.

5 Q. Have you been helping me investigate Mr. Alonzo's
6 petition?

7 A. Yes, sir.

8 Q. During your investigation, did you make a few open
9 records request from the Dallas Police Department?

10 A. One open records request and one request through
11 subpoena.

12 Q. Would it be fair to say you've made quite a few open
13 records requests through the years --

14 A. Yes, sir.

15 Q. -- with the Dallas Police Department?

16 A. Yes, sir.

17 Q. And that you maybe know how to gain the system, as it
18 were, a little bit better than someone who wouldn't know how
19 to obtain documents?

20 A. Well, it's -- when it comes to how you make the specific
21 request and what you put in writing it can have a big affect
22 in what you get back.

23 Q. All right. Did you -- when did you make the open
24 records request in this case?

25 A. I have a copy here.

1 January 22nd, 2010.

2 Q. And what precisely did you request in that open records
3 request?

4 A. Listed the name of the complainant, Israel Martinez, the
5 date of the offense, and then in the body of the request
6 please include complete offense report with all supplements,
7 photo lineups of any suspects, witness statements, all report
8 from SWIFS, which is the Southwest institute of forensic
9 sciences, prosecution report, and any other reports.

10 Q. And how long did it take for that request to come back?

11 A. Eight to ten weeks, roughly.

12 Q. And when did you receive the request back?

13 A. I believe we got it back last month, March.

14 Q. And did you have occasion to count how many documents
15 you received?

16 A. We got -- as a result of that request 258 pages.

17 Q. And in that -- in that request was the document that's
18 the Petitioner's Exhibit 1 --

19 MR. BIGGS: May I approach, Your Honor?

20 THE COURT: You may.

21 BY MR. BIGGS:

22 Q. Mr. Saal, I know you'll be familiar with that document.

23 Do you recall whether that document was -- Exhibit 1 was
24 found in the open records request?

25 A. Yes, sir, it was.

1 Q. Did you recent also subpoena documents from the Dallas
2 Police Department?

3 A. Yes, sir, I did.

4 Q. And when did you serve a subpoena?

5 A. I don't have my returns with me, but I believe it was
6 last week.

7 Q. And what was the request on the subpoena that was
8 provided?

9 A. Complete offense report with all supplements, photo
10 lineups of any suspects, witness statements, all reports from
11 SWIFS, prosecution report, and any other reports regarding
12 arrestee Alonzo Quintin Lee.

13 Q. Is that identical language to your first request?

14 A. It's really close if it's not identical, yes, sir.

15 Q. And when you picked up these documents from the Dallas
16 Police Department, when did you do that?

17 A. Picked these up I believe it was Monday.

18 Q. And how many documents did they provide you on that
19 request?

20 A. 44 pages.

21 Q. And did you ask them -- did you -- about the
22 discrepancy?

23 A. Yes, I did.

24 Q. And what did they tell you?

25 A. I talked with the supervisor there who indicated that we

1 had made the request through records as opposed to open
2 records and that the -- that resulted in the discrepancy.

3 However, I served a supervisor of open records with the
4 request and, you know, they're basically the same request.

5 MR. BIGGS: Pass the witness.

6 THE COURT: Cross-examination?

7 MS. KUYKENDALL: No questions, Your Honor.

8 THE COURT: Can Mr. Saal be excused?

9 MR. BIGGS: Yes, Your Honor.

10 MS. KUYKENDALL: Yes, Your Honor.

11 THE COURT: Thank you very much, Mr. Saal.

12 MR. BIGGS: Your Honor, I'd like to ask permission
13 for Mr. Saal to remain inside the -- the hearing, if that's
14 agreeable with the respondent.

15 THE COURT: Any objection?

16 MS. KUYKENDALL: No, Your Honor.

17 THE COURT: All right. Mr. Saal, you may remain
18 in the courtroom.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Call your next witness.

21 Mr. Biggs, do you have another witness?

22 MR. BIGGS: Sorry.

23 Yes. We'll call Jimmy Brown, Your Honor.

24 THE COURT: All right. Just to confirm, Mr. Brown,
25 were you among the witnesses that were sworn in this morning?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Please be seated, and speak into the
3 microphone.

4 DIRECT EXAMINATION

5 BY MR. BIGGS:

6 Q. Please state your name for the record?

7 A. Jimmy Brown.

8 Q. Where do you live?

9 A. 2738 Grafton Road.

10 Q. Is that the same place you lived in 2001?

11 A. No, sir, that's not correct.

12 Q. Where did you live in 2001?

13 A. I was living right there off of Brandt -- Bill Harrod
14 and Clymer Street, with some friends of mine, Lane and Cesar
15 Gutierrez, right there on the corner of -- where the incident
16 took place.

17 Q. How far away is that from the Gauna --

18 A. It's right next door, actually. They had like a little
19 rental -- rental -- rental space in between, but it's right
20 next door, actually.

21 Q. I'm sure you know why we're here.

22 Do you -- do you remember June 8th and June 9th of 2001?

23 A. Somewhat I do, yes.

24 Q. Would you tell --

25 A. Okay.

1 Q. -- would you tell us what you remember?

2 A. Well, this is -- I guess it was around -- it was after
3 midnight. I don't know exactly what time, but it was after
4 midnight, I'm sure. I was sitting on the porch.

5 Q. Where?

6 At your house?

7 A. No. At the house where I was staying at, right there on
8 Bill Harrod Street. I was sitting on the porch, myself and
9 one of the -- one of the guys that actually lives in the
10 house. So we were just sitting there talking.

11 And then all of a sudden we hear -- I hear some shots go
12 off. And that -- that startled us. So I -- I -- I proceeded
13 to get up and run to -- to where the noise was coming from.
14 And by that time everyone had -- had already seemed to be
15 spreading out, commotion going on, people screaming.

16 And by the time I got there, I just saw -- happened to
17 see the person -- I don't know if it was the shooter or not,
18 but see the person -- see a man walk -- run across the street
19 to a black Cadillac -- or Cadillac. I can't remember if it
20 was black, but it was kind of dark. But it was kind of a
21 large car and to me -- to me had the body shape of a
22 Cadillac.

23 Q. Let me back you up a little bit.

24 A. Okay.

25 Q. Did you -- did you hear gun fire?

1 A. Yes, I did. I heard about two or three shots, I can't
2 remember exactly how many.

3 Q. And then did you proceed to run over there or --

4 A. Well, instead of running away, like everybody else was
5 doing, I kind of just ran to the -- 'cause at the house where
6 I was at they have a little fenced area when you run to it
7 you can actually see where -- the house where the incident
8 took place.

9 And so when I went to the fence -- when I ran to the
10 fence I just saw the people running, and -- and some guy,
11 like I said, shoot -- running towards -- running towards that
12 vehicle.

13 Q. And how much time do you think passed between the first
14 gunshot you heard and when you actually came into sight of
15 the home?

16 A. It wasn't -- it wasn't very long. I mean, it was like
17 almost -- almost simultaneously, you know.

18 Q. And what exactly did you see?

19 You saw you said people scattering.

20 A. Yeah, people scattering.

21 And I looked, happened to see right across the street,
22 there's a little park area there, this car that was parked,
23 and it had -- to me it had -- I know -- I know the shapes of
24 cars and it had the shape of a Cadillac. But it was kind of
25 dark and stuff, I couldn't actually see the paint color, or

1 nothing like that.

2 But this person ran to the car and gets in the car and
3 the car spins -- spins -- spins -- spins away.

4 Q. Did you see -- could you describe that person you saw
5 running to the car?

6 A. Well, he was -- he wasn't a tall person. He wasn't
7 tall. Wasn't -- wasn't a heavyset man. Wasn't -- I would
8 say he -- he wasn't slender either. I guess he kind of
9 had like a -- he was a short guy with somewhat -- you know,
10 he looked like he had a little build on him, you know. But
11 it was a short person, wasn't -- looked like a Hispanic guy.
12 He didn't look like a black guy to me or a white guy, you
13 know, with skin color. I just saw the guy run across and I
14 was close enough to see some of -- some of -- he was wearing
15 a T-shirt.

16 Q. What else was he wearing?

17 A. Wow, I just saw the white T-shirt. You know, I'm not --
18 I can't recall.

19 Q. That's perfectly fine.

20 Did you see -- did you see him with a gun?

21 A. Actually, you know, when I was -- I don't -- I wasn't
22 looking at his hands. I just saw -- saw this person running
23 to the car. That's all I saw.

24 Q. So when you first saw him was he running away from the
25 house or towards the house or --

1 A. No, he was running away from the house, because the
2 shots had already taken place.

3 Again, I don't know if this person was the shooter, but
4 this person was running towards this vehicle, so . . .

5 Q. Did you see what -- did you see what door he got in
6 of -- of the vehicle?

7 A. I recall -- I recall him going to the left side of the
8 vehicle on the back side of the vehicle, not -- not the
9 driver's side, but the back side, get inside the vehicle.

10 Q. Is that the rear passenger side?

11 A. Yes, it is. Yes, it is.

12 Q. Did you see anyone driving the vehicle?

13 A. I don't recall.

14 Q. Did you see anyone else inside that Cadillac?

15 A. I saw another head in there, but -- but, again, it was
16 dark. It was more -- just more of a shadow pretty much is
17 what I saw.

18 Q. And were you at that house at the time of Mr. Alonzo's
19 trial, that would have been in February of 2003?

20 A. Was I -- was I there?

21 Q. Were you located -- were you still living next door?

22 A. Yes, I was. Off and on. But I could still be reached
23 there.

24 But, no, no one came to -- to speak with me, interview
25 me.

1 I know the day of the -- the next day of the incident
2 Channel 4, 11, 33 and Telemundo came and interviewed me, but
3 after that no one came to talk to me, to -- to question me or
4 nothing. I was available. I was waiting to see if anybody
5 would, and nobody -- no one came.

6 Q. And no one from the defense --

7 A. No. No one.

8 Q. And would you have been willing to testify to the things
9 you saw in the trial?

10 A. Yes. Of course I would have.

11 MR. BIGGS: Okay. Nothing further of this witness.

12 MS. KUYKENDALL: Just a few questions.

13 CROSS EXAMINATION

14 BY MS. KUYKENDALL:

15 Q. Mr. Brown, my name is Leslie Kuykendall.

16 Okay. So I just want to make sure that I got your
17 testimony correctly.

18 So basically, if I understood what you said, you were at
19 a house nearby, and you were sitting on the porch, you heard
20 shots first and then you saw somebody running across the
21 street towards this what you think was a Cadillac.

22 A. Yes. Well, actually you can't -- you can't deny the --
23 that it was a Cadillac, even though it was kind of dark. But
24 it was -- there was this person and other people were running
25 as well, but -- but this guy, whoever -- whoever this person

1 was, seemed to be -- seemed to be from where the shots --
2 when the shots took place this person was coming from the --
3 from the area where the shots took place. And this is one --
4 this is afterwards when I talked to people.

5 Q. Okay. So -- all right. But you did -- but you
6 didn't -- you didn't see the shots?

7 A. No, I didn't. I just heard them, ma'am.

8 Q. I'm sorry. I'm sorry to speak over you.

9 A. That's fine. That's fine.

10 Q. All right. And you said you heard about two to three
11 shots?

12 A. Yes, I did.

13 Q. Okay. And then after -- after that you see someone
14 running.

15 A. Yeah. It was -- it was within seconds, too, that --

16 Q. Okay.

17 A. You know.

18 Q. So he's running across the street to the Cadillac. And
19 if I recall correctly you saw -- you got a glimpse of what he
20 was wearing.

21 A. Yeah.

22 Q. And you -- you think that was a white shirt.

23 A. It was -- it was a white shirt.

24 Q. Okay.

25 A. You can tell, because white T-shirts stand out even in

1 the dark.

2 Q. It was pretty dark out there?

3 A. It was. It was. At that time of night it is. But not
4 enough where you can't tell a white T-shirt, you know.

5 Q. Right. Sure.

6 Okay. But you didn't see his face?

7 A. No, I didn't, ma'am.

8 Q. Okay. And you didn't see his hands. You don't know --
9 I'm sorry, that's two questions.

10 Go ahead. You didn't see his hands.

11 A. No -- no I didn't. I was -- I wasn't looking at the
12 time at his hands.

13 Q. Okay. So you don't know whether he was carrying a gun
14 or not?

15 A. I don't recall, ma'am.

16 Q. All right. So the defenses' theory of the case was
17 basically that the defendant here fired shots and that the
18 shots that came later were fired by other people. And would
19 you agree with me that what you would have testified to, you
20 know, that you heard shots and then you saw someone running,
21 would not necessarily be inconsistent with what the State was
22 thinking happened?

23 A. Um-hum. Um-hum.

24 Q. Okay. All right.

25 A. Um-hum.

1 MS. KUYKENDALL: All right. I -- I have -- well,
2 I'll pass the witness.

3 THE COURT: Anything else?

4 MR. BIGGS: Nothing further, Your Honor.

5 THE COURT: May the witness be excused?

6 MR. BIGGS: No objection from the petitioner.

7 MS. KUYKENDALL: None from the State.

8 THE COURT: All right. Sir, you're free to leave.

9 THE WITNESS: Thank you, ma'am.

10 THE COURT: Call your next witness.

11 MR. BIGGS: Petitioner calls Francisco Perez.

12 THE COURT: All right. All right, sir. Let me
13 confirm, were you in the group this morning that was sworn?

14 THE WITNESS: Yes.

15 THE COURT: All right. Please be seated. Please
16 speak up into the microphone.

17 DIRECT EXAMINATION

18 BY MR. BIGGS:

19 Q. Hi.

20 A. Hello.

21 Q. Please state your name for the record.

22 A. Francisco Perez.

23 Q. Do you know Mr. Alonzo?

24 A. Yes.

25 Q. How do you know him?

1 A. From around the neighborhood.
2 Q. Where did you live?
3 A. In Arcadia park.
4 Q. And is that in West Dallas?
5 A. It's in --
6 Q. Or Oak Cliff?
7 A. Oak Cliff area, and Jefferson.
8 Q. When was the last time you've spoken with Mr. Alonzo?
9 A. About ten years ago, I guess. Nine years ago.
10 Q. Been a long time?
11 A. Yeah.
12 Q. And do you recall the evening of June 9th, 2001?
13 June 8th and June 9th, 2001?
14 A. A little bit.
15 Q. And were you at the party hosted by Santos Gauna?
16 A. Yes, I was.
17 Q. Where he was shot, you were at the party?
18 A. Yes.
19 Q. And who did you come with, to the party?
20 A. Two friends.
21 Q. And where -- where were you when -- well, let's just go
22 back a little bit.
23 Did the party begin to get a little bit out of control?
24 A. Yes, it did.
25 Q. And what do you remember happening that started

1 sending --

2 A. I remember people started talking towards the front.

3 Q. Who -- who was that?

4 A. I guess everybody. Everybody at the party.

5 Q. Where -- where were you located?

6 A. I was in the backyard, by the garage.

7 Q. And had you had anything to drink that night?

8 A. No.

9 Q. And how many people do you think were there?

10 A. Probably about 50.

11 Q. And what do you remember happening?

12 A. I remember I started walking towards the front to take
13 off and then there was a couple of guys got there and some
14 cars came out and got out the car and started chunking
15 bottles towards the crowd. And then the shooting started.

16 Q. Were -- were you walking --

17 A. I was walking towards the front of the house.

18 Q. Were you leaving because things had gotten -- had
19 escalated?

20 A. Yeah.

21 Q. Or were you leaving anyway?

22 A. I think they said for everybody to leave.

23 Q. Did you remember hearing that?

24 A. No. I just remember everybody taking off, so I
25 followed.

1 Q. Prior to you coming forward to the front of the house
2 did you see anyone fighting in the back?

3 A. No.

4 Q. Did -- did you hear anything?

5 Did you hear a commotion?

6 A. No. I don't remember.

7 Q. So when you walked to the front, what did you -- what
8 did you see?

9 You said you saw some people throwing bottles?

10 A. Yeah.

11 Q. Do you know who up saw throwing bottles?

12 A. I don't -- I don't know. The guys that were chunking
13 bottles, they just -- it was a whole bunch of 'em.

14 Q. Do you know -- do you know how many people were throwing
15 bottles at each other?

16 A. I think about 20, 20, 30 people.

17 Q. And where exactly were -- were you in conjunction with
18 the house?

19 Were you in the front door --

20 A. Right in the front -- on the sidewalk, towards the front
21 of the house.

22 Q. Were you inside the fence?

23 A. Yes.

24 Q. And what did you see next?

25 A. Just guys started shooting.

1 Q. Did --

2 A. They got there in the car and I think it was a truck
3 behind them.

4 Q. How many people did you see shooting?

5 A. I think around five or six.

6 Q. Did you see anyone you recognized shooting?

7 A. No.

8 Q. Is there anyone -- you didn't -- you didn't know anyone
9 that was shooting?

10 A. No, I didn't know 'em.

11 Q. How were the -- can you describe any of the shooters and
12 what they were wearing?

13 A. No, I don't remember.

14 I just remember them getting there in a -- in a car and
15 started shooting.

16 Q. Do you remember -- Who do you remember?

17 Did you see shooting before people got in the cars?

18 A. Before?

19 Q. Yes. You saw people throwing bottles?

20 A. Yeah.

21 Q. And then later you saw people in cars.

22 Did -- what happened between then.

23 A. Well, see the cars were already there when they were
24 chunking bottles. They were parked in the front, blocking
25 off the street.

1 Q. Did you see anyone shooting guns -- a gun?

2 A. I seen three people shooting guns.

3 Q. Do you remember whether they were inside a car when they
4 were shooting or they were standing outside?

5 A. I remember one guy hanging out a car shooting and one
6 standing. The rest of 'em standing outside.

7 Q. Can you -- can you describe what any of those people
8 were wearing?

9 A. No, I cannot.

10 Q. And do you recall the direction of the gunfire?

11 A. Yeah. From the street towards the -- towards the house.

12 Q. Did you recall anyone shooting from the house towards
13 the street?

14 A. No.

15 Q. Do you remember whether the -- everyone started shooting
16 at once or was it in consequence or what do you remember?

17 A. I think it was all at once, yeah.

18 Q. And what did you do after that?

19 A. I ran.

20 Q. Did you -- did you speak to the police that night?

21 A. No.

22 Q. Were you ever interviewed by the police?

23 A. No.

24 Q. Did you ever -- were you ever interviewed by Quintin
25 Alonzo's investigator, John Rosa?

1 A. Yes.

2 Q. And were you subpoenaed to testify?

3 A. Yes.

4 Q. Did you come to court --

5 A. Yes.

6 Q. -- to testify?

7 And was it your understanding that you were going to
8 testify at trial?

9 A. Yes, it was.

10 Q. Were you ever told why you did not testify?

11 Or let me just back up.

12 Did you testify?

13 A. No.

14 Q. And were you ever told why you did not testify?

15 MR. MEADOR: Object to the hearsay.

16 THE COURT: Overruled. He asked whether.

17 THE WITNESS: No.

18 BY MR. BIGGS:

19 Q. Did you -- so it was just you didn't get called to the
20 stand?

21 A. Yes.

22 Q. Okay. Did you see Quintin Alonzo at that party?

23 A. Yes.

24 Q. Where did you see him?

25 A. On the way when we were -- when we -- when we got there,

1 he was there. And on the way out.

2 Q. Did you spend -- were you friends with Quintin?

3 A. I knew him.

4 Q. Did you hang out with him at the party at all or --

5 A. I didn't -- I got there with two other friends, so, no,
6 we didn't hang out. We shook each other's hand and that was
7 about it.

8 Q. Did you see him in the front yard when the shooting was
9 occurring?

10 A. Yeah. I seen him in front of me.

11 Q. Did you see him firing a gun?

12 A. No.

13 Q. Can you say that with certainty?

14 A. Oh, he was standing right in front of me.

15 Q. And what happened when the shooting started?

16 A. I ran towards the side of the house behind a tree, and I
17 seen him run also.

18 Q. Where did you run?

19 A. Towards the side of the house, towards the left of the
20 property, behind a tree.

21 Q. Did you run to the -- did you run all the way to the
22 back or did you stay at the side?

23 A. No. Towards -- towards the side.

24 Q. Did anyone else run in that direction?

25 A. Yeah. A few people.

1 Q. And what did you do then?

2 Did you take cover?

3 A. Yes.

4 Q. What -- how did you -- where did you take cover?

5 A. Behind a tree.

6 Q. Did you crouch down or --

7 A. Yes, I crouched down.

8 Q. Did you see where Mr. Alonzo -- Alonzo went when you --

9 A. He ran -- he ran towards the back, I think, back of the
10 house.

11 Q. Did you see him?

12 A. Yeah. When -- whenever I was taking cover I looked back
13 and I seen a couple of people running and I seen him running,
14 too.

15 Q. Did you see him running in front of you?

16 A. Behind me.

17 Q. And he was -- and did he run the same direction as you,
18 towards the left side of the house?

19 A. He ran towards the left back.

20 Q. Did you see where he ultimately stopped running or
21 crouched?

22 A. No.

23 Q. Did you see him again that night?

24 A. No.

25 Q. Are you still friends with Mr. Alonzo?

1 A. Yeah.

2 Q. Do you talk to him?

3 Do you correspond with him -- do you write letters with
4 him?

5 A. No.

6 Q. Do you talk to him on the phone?

7 A. No.

8 Q. Do you talk to his family?

9 A. No.

10 Q. And when was the last time you said you've seen Mr.
11 Alonzo?

12 A. Nine, ten years ago.

13 MR. BIGGS: No further questions.

14 THE COURT: Cross-examination?

15 MR. MEADOR: Yes, Your Honor.

16 CROSS EXAMINATION

17 BY MR. MEADOR:

18 Q. Hi, Mr. Perez.

19 Do you recall giving a statement to a John Rosa, an
20 investigator?

21 A. Yeah. Do you recall saying that when the shooting
22 started I ran back towards the garage and took cover behind a
23 tree and Quintin was standing right next to me taking cover?

24 Was he with you behind the tree taking cover?

25 A. No.

1 Q. Okay. So that's not correct?

2 A. He was like a few feet behind me.

3 Q. How do you -- if he was behind you, how do you know he
4 was behind you?

5 A. I glanced back.

6 Q. Okay.

7 A. I seen -- I seen I guess the shirt he was wearing.

8 Q. Okay. So where were you again then when -- when he was
9 behind you?

10 Out front, you were --

11 A. Out front in front of -- behind the tree.

12 Q. So you -- you were behind a tree.

13 And where was he in relation to that tree?

14 Well, let me make sure.

15 MR. MEADOR: Your Honor, may I approach real quick?

16 THE COURT: You may.

17 BY MR. MEADOR:

18 Q. I'm referring --

19 MR. MEADOR: Your Honor, there's some diagrams in
20 my tab 13 that were actually exhibits at the trial.

21 BY MR. MEADOR:

22 Q. This is a diagram that was admitted at trial. Take a
23 second to look at that.

24 A. There's another tree over here, (indicating)

25 Q. Okay. In that diagram then there's a tree that's

1 marked. It says tree, right?

2 A. Yeah.

3 Q. Okay. But the tree that you were behind was further --

4 A. Here (indicating)

5 Q. On the other side, on another property?

6 A. No. Same property.

7 Q. Okay. What are those?

8 A. Curb.

9 Q. So there was a curb in the middle of the property?

10 A. No. I don't remember seeing --

11 Q. Okay.

12 A. -- a curb.

13 Q. So this was the garage (indicating).

14 This is the tree that's marked in that diagram
15 (indicating).

16 And there's another tree that you were behind?

17 A. Yeah. I wasn't behind that tree (indicating).

18 Q. In relation to this -- where this tree was, let's say
19 it's -- it's to the right looking at the diagram, right over
20 here, where did the shooting take place?

21 Can you -- in relation to the house can you see it?

22 A. That's this (indicating)?

23 Oh, Okay. It happened right here, right in the street.

24 Q. Right here (indicating)?

25 You think that might be just a car parked there?

1 Does that look like a car to you?

2 A. No.

3 Q. It doesn't.

4 Okay. So how far away from the shooting do you think
5 you were?

6 A. I don't know. About 10, 20 feet.

7 Q. 10, 20 feet.

8 So what -- do you remember what time of night it was?

9 A. No.

10 Q. You don't recall what time of night?

11 A. No, I don't.

12 Q. Was it, I mean, around midnight?

13 A. Yeah. It was late.

14 Q. You mentioned that it was dark.

15 A. Yeah.

16 Q. I mean, how can you be sure, you know, where anybody
17 was, if it was real dark?

18 A. It was lit up.

19 Q. In what way?

20 A. There's a park right across the street and it's got
21 heavy light.

22 Q. Now, is -- is it your testimony that the guys throwing
23 bottles were the ones that actually initiated the shooting?

24 A. Um-hum.

25 Q. Okay. So they drove up, started throwing bottles, and

1 they're definitely the ones that started shooting?

2 A. Yeah.

3 Q. All right. So as far as the -- the -- the statement
4 that you gave to John Rosa then, if the statement were to say
5 that Quintin was taking cover behind the same tree that I was
6 at while the shooting was taking place, that would be
7 incorrect?

8 A. He was -- I don't know if he was trying to take cover
9 behind the tree, but he was behind it a few feet.

10 Q. So, but he's -- you were sort of hunkered down there by
11 the tree and he wasn't hunkered down there with you?

12 He was maybe a few feet behind you?

13 A. Um-hum.

14 Q. So you said you saw 20 or 30 people throwing bottles.

15 A. There was a lot. I couldn't count, you know.

16 Q. Just -- and you said there were about 50 people there,
17 so nearly half the people were throwing bottles?

18 A. It seemed like it.

19 Q. So were they throwing them towards the street and from
20 the street towards the house and from the house towards the
21 street?

22 So everybody -- it was just a big bottle fight?

23 A. Yes.

24 MR. MEADOR: Pass the witness.

25 THE COURT: Mr. Biggs.

1 MR. BIGGS: Nothing further.

2 THE COURT: All right. May the witness be excused?

3 MR. BIGGS: Yes, Your Honor.

4 MR. MEADOR: Yes, Your Honor.

5 THE COURT: Any objection?

6 All right. Sir, you're free to leave.

7 Thank you.

8 Next witness.

9 MR. BIGGS: Petitioner calls Sandra Cazares.

10 THE COURT: Ma'am, if you would please come forward
11 to the witness stand.

12 And let me just confirm, were you in the group this
13 morning that got sworn?

14 THE WITNESS: Um-hum.

15 THE COURT: Okay. Is that a yes?

16 THE WITNESS: Yes.

17 THE COURT: Please be seated and speak up into the
18 microphone.

19 You may proceed.

20 DIRECT EXAMINATION

21 BY MR. BIGGS:

22 Q. Hello, Ms. Cazares. I'm William Biggs. Have we ever
23 met before?

24 A. No.

25 Q. And do you live in Dallas?

1 A. Yes.

2 Q. Do you -- are you friends with Quintin Alonzo?

3 A. We weren't friends, but I knew who he was.

4 Q. And how long has it been since you've seen Mr. Alonzo?

5 A. Nine, ten years.

6 Q. Have you stayed in touch with him at all?

7 A. No. No.

8 Q. Were you at the party at Santos Gauna's the night of the
9 shooting?

10 A. Yes.

11 Q. And who did you -- do you remember that night
12 distinctly?

13 A. A little bit.

14 Q. It's been a long time?

15 A. Yeah.

16 Q. Do you remember what time you got to the party?

17 A. No, I don't. It was maybe 9:00, 10:00 o'clock.

18 Q. Do you remember when the party sort of started getting a
19 little out of hand?

20 A. It was pretty late. I'm not sure what time, but it was
21 pretty late.

22 Q. And where were you when things started to -- what do you
23 remember seeing things started to get out of hand?

24 A. Me and a couple of friends, we needed to go to the
25 restroom and we couldn't go inside, so we went to a gas

1 station down the street.

2 When we came back there was like a commotion going on,
3 and we parked at the park across the street. And as we were
4 walking back towards the party, that's when I heard -- we
5 heard the shooting.

6 Q. And how far away were you from -- from the house when
7 you heard shooting?

8 A. Maybe about 40 yards, 50 yards.

9 Q. Could you see the house from --

10 A. Yeah.

11 Q. And who were you with?

12 A. Just a couple of friends of mine.

13 Q. What did you -- what did you do when you heard gunshots?

14 A. We ran back to our car and ducked, because we didn't
15 know where the bullets were coming from.

16 Q. Did you -- did you see anything?

17 A. I distinctly remember seeing guys running to a car. It
18 was a Cadillac, like an older Cadillac. It was a -- dark
19 colored. I don't remember, it was maybe like black, blue,
20 green. But it was a dark color. It was an older car, like
21 the big ones, and a guy just coming up and down, you know, I
22 could see the guy flashing.

23 Q. When you say "coming up and down," what do you -- what
24 do you mean?

25 A. Kind of like he would go up and then he would, you know,

1 duck back down.

2 Q. Are you saying that he was behind the car?

3 A. Yeah, he was behind the vehicle.

4 Q. He was outside of the vehicle?

5 A. Um-hum.

6 Q. And how many people did you see --

7 A. I seen --

8 Q. -- near the vehicle?

9 A. -- two.

10 Q. When did you first see those people?

11 A. When we were -- we were starting to walk back to the
12 house, we seen them running towards the car. And so
13 that's -- a little bit when they were running towards the
14 car, that's when the shooting started.

15 Q. Did you see what those people were wearing?

16 A. I remember one, he was wearing like dark blue jean pants
17 and a white shirt. And that's -- I don't even remember what
18 the other guy was wearing.

19 Q. And do you remember anything else -- any physical
20 descriptions of --

21 A. He was a Latin male. But --

22 MR. MEADOR: I didn't understand that.

23 MR. BIGGS: Latin male.

24 MR. MEADOR: Okay. Thank you. Sorry.

25 BY MR. BIGGS:

1 Q. Did you recognize him?

2 A. No, I had never seen him before.

3 Q. Did you see anyone shooting?

4 Did you see anybody firing their gun?

5 A. This particular guy was the one where I seen the flashes
6 coming from.

7 Q. When you say you saw flashes, what do you mean?

8 Be more specific, please.

9 A. Kind of what a gun would do, like flash (indicating).
10 When he would shoot it there was a bright flash.

11 THE COURT: Can you speak up just a little bit?
12 I'm having a hard time hearing you.

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 BY MR. BIGGS:

16 Q. Which direction would the flash go?

17 Which -- which direction were they shooting --

18 A. It was going towards the house.

19 Q. Towards the house?

20 A. Um-hum.

21 Q. Did you see that person running to the -- the Cadillac
22 or did you see -- first see them behind the Cadillac?

23 A. I seen them running towards the Cadillac.

24 Q. And you said you saw two individuals?

25 A. Um-hum.

1 Q. Did you see the -- what the other individual was doing
2 at that time?

3 A. I don't remember.

4 Q. Do you know exactly how the Cadillac was parked?
5 Just where exactly was he crouching behind the Cadillac?

6 A. The back -- the back end of the car, towards like the
7 rear passenger seat.

8 Q. The rear passenger side?

9 A. Um-hum.

10 Q. And did you see him -- what did you see him doing,
11 specifically?

12 A. After he ran to the car I seen him like come up, like --
13 like stand near the car and then just duck back down. Like
14 this, duck down (indicating).

15 Q. And did you say you saw flashes?

16 A. Yes.

17 Q. From near that direction?

18 A. Um-hum, from like in his area.

19 Q. Did you see -- did you see a gun?

20 A. No, I don't remember seeing a gun.

21 Q. Did you see anyone else shooting a gun from where you
22 were?

23 A. I heard gunshots coming the other way, but I didn't see
24 who it was. I didn't even see where it was coming from.

25 Q. Did you see -- did you see that person get into a

1 Cadillac eventually?

2 A. Um-hum. They left in that Cadillac.

3 Q. How long were you observing this before you took cover?

4 A. Well, we took cover and we could still -- from where we
5 were parked at, we were parked at an angle from where we
6 could still see everything but we were still covered.

7 Q. And how long did the shooting go on for?

8 A. About five, ten minutes, maybe. It was not that long.

9 Q. Did you see -- who did you see get inside that Cadillac?

10 A. The -- the two males that I seen running towards the
11 car.

12 Q. Did -- did you see what -- you said you did not see what
13 the other man was doing at that time?

14 A. No.

15 Q. Did you see where those individuals -- did you see where
16 they got in the car, which one got -- who got in driver's or
17 passenger's seats or whatever?

18 Did you see any of that?

19 A. The one with the white shirt, he got in the back.

20 Q. Did he get in on the same side that he was -- did he get
21 in on the passenger side or the driver's side in the back?

22 A. The passenger.

23 Q. Did you see the other individual get in the car?

24 A. No. I don't -- I don't remember.

25 Q. Were you -- did you go down to the police station that

1 evening?

2 A. No. I was across the street. My brother was actually
3 still at the party. He was -- I was across the street at the
4 park; he was at the house. So I waited for him for a little
5 bit, but the cops said they were keeping him. So they kept
6 him. When they brought him home they picked me up, and I
7 went to the station and gave my statement.

8 Q. And did you -- did anyone contact you after you gave
9 that statement, either the -- well, first, did the police
10 contact you after that?

11 A. I remember somebody coming to the house, but I don't
12 remember if I like -- what was said. I just remember
13 somebody -- after I took the statement somebody did come to
14 my house, but I don't remember what was exactly done.

15 Q. Did you -- did you ever speak with anyone for the police
16 after -- after that night that you gave a statement?

17 A. I don't remember who this person was, if they were -- or
18 who they were with.

19 Q. Did you speak to that person?

20 A. Yeah. Does -- but I don't remember what we spoke about.

21 Q. How long after the incident was that?

22 A. I don't remember.

23 Q. Did you ever speak with anyone who was working on behalf
24 of Mr. Alonzo?

25 Did you ever speak to an investigator?

1 A. No.

2 Q. Did you speak with an attorney?

3 A. No.

4 Q. Were you living in Dallas?

5 A. Yes.

6 Q. Were you subpoenaed to testify?

7 A. No.

8 Q. Were you subpoenaed to testify for either side?

9 A. No.

10 Q. Were you available to testify --

11 A. Yes.

12 Q. -- if you were needed?

13 A. Yes.

14 Q. Were you willing to come in and testify to what you saw?

15 A. Yes.

16 Q. Do you know -- Did you know or do you know Li cho

17 Escamilla?

18 A. I didn't know him, but I had heard of him around the

19 neighborhood but I didn't know who he was.

20 Q. And did you live in the same neighborhood as him?

21 A. I don't think so.

22 Q. Where -- where did you live -- what neighborhood do you

23 live?

24 A. I live in Western Park. It's by -- it's in Oak Cliff.

25 Our division was called Western Park.

1 Q. Would you consider yourself at that time friends with
2 Quintin Alonzo or acquaintances or --

3 A. I knew some of his friends, had spoke to some of his
4 friends, but me and him, we personally didn't know each
5 other.

6 Q. Did you remember seeing him at the party?

7 A. No, I don't.

8 Q. Either before or after you left for the gas station?

9 A. No.

10 Q. And what time did you remember leaving for the gas
11 station?

12 A. I don't remember.

13 Q. And -- and -- but you don't remember seeing him?

14 A. No, I don't remember seeing him.

15 Q. Did you remember seeing Li cho Escamilla at the party?

16 A. No. I -- I didn't know what he looked like, so I
17 couldn't tell you if he was there or not.

18 MR. BIGGS: Nothing further.

19 Pass the witness.

20 THE COURT: Mr. Meador.

21 CROSS EXAMINATION

22 BY MR. MEADOR:

23 Q. Is it Cazares?

24 A. Cazares.

25 Q. Okay. Thank you.

1 You did get -- you did give a written statement to
2 police, correct?

3 A. Yes.

4 Q. And in that statement you indicated that you were at the
5 party I think, and then the statement said around 12:20 you
6 had to go to the restroom, you decided to get your keys and
7 you went to the Fina Mart does that sound about right?

8 A. Um-hum.

9 Q. And prior to that you had seen the Cadillac pull up and
10 it was there?

11 A. Yeah. I remember seeing it parked there, like right in
12 front of the house.

13 Q. And then you left and you came back and it was still
14 there; is that correct?

15 A. Yes.

16 MR. MEADOR: Your Honor, may I approach again?

17 THE COURT: You may.

18 BY MR. MEADOR:

19 Q. I'm going to refer again to the diagrams in my tab 13,
20 just for some reference.

21 These are some diagrams that were admitted at trial.

22 I just wanted to see if you could -- and I'm looking
23 at -- let's see, Exhibit -- State's Exhibit 31-A, it's sort
24 of the one that gives the -- about where did you park?

25 A. We were parked like right here (indicating).

1 Q. Okay. So in this diagram there is the word playground
2 and then there looks like to be an opening. Is that the
3 parking lot?

4 A. Yeah, that's the parking lot.

5 Q. And then it says numbers 2, 5, 1, 3, and 4 are sort of
6 right at the mouth of the parking lot; is that correct?

7 A. Um-hum.

8 Q. I just want to sort of give some reference to the court.
9 So you would have come back and you pulled in and parked
10 here and sort of facing that way.

11 And when you drove by I think you indicated that you
12 thought there was going to be a fight --

13 A. There looked like there was commotion like around the
14 driver area.

15 Q. And so you drove on by and just pulled in and parked?

16 A. Yeah.

17 Q. And I think you said that was about 40 yards?

18 A. I want to say 40 yards, 50 yards. I'm not sure.

19 Q. Do you remember how dark a night it was that night?

20 A. There was light because of the park across the street.
21 In the recreation's parking lot there's lights there.

22 Q. But it was dark enough that you could see muzzle
23 flashes?

24 A. Um-hum.

25 Q. So it wasn't like daylight when you might not be able to

1 see --

2 A. Yeah, it wasn't daylight.

3 Q. But you couldn't identify any of the people that were
4 shooting; is that correct?

5 A. Yes.

6 Q. Didn't recognize any of them?

7 A. I didn't recognize anybody, didn't know who they were.

8 Q. Did you hear additional shots at all?

9 A. I heard additional shots, like coming from the house,
10 but I didn't know who was shooting.

11 Q. Back towards the Cadillac?

12 A. Um-hum.

13 Q. And the folks near the Cadillac?

14 A. Yes.

15 Q. Now, you also indicated in your statement you saw a
16 person with a red T-shirt. You're certain it was red?

17 A. I don't remember.

18 Q. Are you certain it was a T-shirt?

19 A. Yes.

20 Q. It was a T-shirt as in --

21 A. T-shirt.

22 Q. What sort of T-shirt?

23 A. I want to say just a regular, plain T-shirt.

24 Q. Do you know if it had the straps over the shoulders or
25 it was just sort of a full T-shirt down -- halfway down the

1 arm or --

2 A. Just a regular T-shirt.

3 Q. Do you know what sort of T-shirt I'm talking about?

4 A. Just like what an undershirt T-shirt would look like?

5 Q. Okay. Good. Okay. An undershirt. All right. Thank
6 you.

7 So was it a sleeveless undershirt or did it have the
8 sleeves?

9 A. It had the sleeves.

10 Q. Sleeves that go like halfway down the bicep or so?

11 A. Yes.

12 Q. Okay. That's all I wanted.

13 MR. MEADOR: I pass the witness.

14 THE COURT: Anything else, Mr. Biggs?

15 MR. BIGGS: Nothing further.

16 THE COURT: May the witness be excused?

17 MR. MEADOR: Yes, Your Honor.

18 MR. BIGGS: That's fine with petitioner.

19 THE COURT: Ms. Cazares, you may leave. You're
20 free to go. Thank you very much.

21 You may call your next witness.

22 MR. BIGGS: The petitioner calls Alejandra
23 Rodriguez.

24 THE COURT: All right. How many more witnesses
25 after this, Mr. Biggs, just for reference?

1 I know you said five more but I forgot at which --

2 MR. BIGGS: We might have one more.

3 THE COURT: After Ms. Rodriguez?

4 MR. BIGGS: Yes.

5 THE COURT: Okay. And Mr. Meador?

6 MR. MEADOR: Your Honor, it's hard for us to say
7 right now, but I'm thinking we may not call anyone.

8 THE COURT: Okay. I just wanted to get a gauge,
9 especially if there were witnesses who could not be here
10 tomorrow.

11 All right. Ma'am, were you part of the group that was
12 sworn in this morning?

13 All right. Please raise your right hand.

14 (Witness sworn.)

15 THE COURT: All right. Please sit down in the
16 chair and please be sure to talk into the microphone, so we
17 can hear you.

18 You may proceed.

19 DIRECT EXAMINATION

20 BY MR. BIGGS:

21 Q. Good afternoon. Could you please state your name for
22 the record?

23 A. Alejandra Rodriguez.

24 Q. And have we met before?

25 A. Yes.

1 Q. How many times have we met?

2 A. Once.

3 Q. When was -- when was that?

4 A. Friday, last week.

5 THE COURT: You need to speak up just a little bit,
6 Ms. Rodriguez.

7 THE WITNESS: I'm sorry.

8 THE COURT: Thank you.

9 THE WITNESS: On Friday last week.

10 BY MR. BIGGS:

11 Q. You came into the office?

12 A. Yes.

13 Q. Do you know Mr. Alonzo?

14 A. Yes, I do.

15 Q. When was the last time that you've seen Mr. Alonzo?

16 A. Years ago. More than ten years ago, probably.

17 Q. Do you keep in touch with him?

18 A. No.

19 Q. All right. Do you consider yourself friends with Mr.
20 Alonzo?

21 A. Back in the day, yes.

22 Q. Do you stay in touch with anyone in his family?

23 A. No.

24 Q. When was the last time you've spoken with anyone in his
25 family?

1 A. About three years ago.

2 Q. And when -- when -- what were the circumstances
3 surrounding that encounter?

4 A. We used to go to church together.

5 Q. Did you go to church -- the same church back in 2001 --

6 A. Yes.

7 Q. -- as Quintin?

8 A. Yes.

9 Q. What church is that?

10 A. Bill Harrod Baptist.

11 Q. Do you still go to that church?

12 A. No, not anymore.

13 Q. And do you -- I'm sure you're aware of why we're here
14 today.

15 Do you remember the party at Santos' house when he was
16 shot

17 A. Yes.

18 Q. And what time did you arrive at that party?

19 A. I was there like around 9:30, 10:00.

20 Q. And how was the party at the beginning of the party?

21 A. This was before everything was even getting set up. It
22 was just like, what, five of us.

23 Q. Were you close friends with Santos?

24 A. Yes.

25 Q. And how -- how well did you know him?

1 A. I grew up with him.

2 Q. Where did you live? At that time?

3 A. At that time I was on a street called Abilene staying
4 with friends.

5 Q. Is that near where Santos lives?

6 A. No. Sort of. Not really.

7 Q. How did you know Santos?

8 When did you first meet Santos?

9 A. At the park across the street from his house.

10 Q. And -- and when was that?

11 How old were you?

12 A. I don't even remember. I was probably like 12 years
13 old, 11.

14 Q. Did you spend a lot of time with Santos?

15 A. Yes.

16 Q. Who else was over there before the party began?

17 A. There was just me and maybe like two or three of his
18 friends, his mom, his dad, and that's it, and the DJ, who was
19 setting up.

20 Q. Did you -- what do you remember, did -- did the party
21 get out of control a little bit?

22 A. Not really. Just when all the commotion started.

23 Q. Well, when did you remember the commotion first
24 starting?

25 A. We got back -- I got back from going to the restroom,

1 there was a conflict in the street and --

2 Q. Is this in the front yard or the backyard?

3 A. This is in the street in front.

4 Q. Had anything happened prior to that that was --

5 A. No.

6 Q. -- that made you uncomfortable?

7 A. No.

8 Q. Just a normal party?

9 A. Yeah. And there was one guy who showed up and he -- of
10 course, everybody was like he's going to start trouble.

11 Q. And Who was that?

12 A. Licho Escamilla.

13 Q. Do you know Licho Escamilla or did you know Licho
14 Escamilla?

15 A. Yes. Yes, I did.

16 Q. How did you know him?

17 A. I went to school with him.

18 Q. Did you -- were you friends with Licho Escamilla?

19 A. No. Not friends.

20 Q. Did you know his brothers?

21 A. Yes. I knew his youngest brother.

22 Q. Were you friends with him?

23 A. Yes.

24 Q. At the time of this party were you friends with his
25 brother?

1 A. Yes.

2 Q. Did you remember -- did you remember when he arrived?
3 Did you see him when he arrived?

4 A. Yes, I did.

5 Q. What was he doing?

6 A. They just came in.

7 MS. KUYKENDALL: Oh, I'm sorry. Your Honor --
8 could you just clarify -- could you clarify who is him?

9 BY MR. BIGGS:

10 Q. All right. When Mr. Escamilla arrived were you -- when
11 did you first see him?

12 A. It was like an hour into the party. They just arrived.

13 Q. So you went to the restroom and then what did you -- did
14 you go out to the front or the backyard?

15 A. To the front.

16 We had to leave to go to the restroom because it was --
17 they had messed it up or something. I'm not sure.

18 Q. So did you leave the house to go to the restroom?

19 A. Yes.

20 Q. Where did you go to the restroom?

21 A. To the Exxon down the street.

22 Q. Did you go by yourself?

23 A. No. It was me and my little sister and two other
24 boys.

25 Q. And who's your little sister?

1 A. Priscilla Rodriguez.

2 Q. And who are the two little boys?

3 A. I don't -- I don't remember.

4 Q. And then what happened when you were walking back?

5 What did you see?

6 A. Well, when we arrived there was two boys leaving. One
7 of 'em his -- his name is Jesse Baron, and we asked him what
8 was wrong, why was he leaving.

9 And he was just all like they're going to start
10 shooting, they're going to start fighting.

11 And we're like, no, you know, this is my friend's party,
12 I don't think they're going to do that. So they left.

13 Q. Who -- who is they?

14 A. Jesse Baron and a friend of his.

15 Q. How many people were in the front yard?

16 A. When we arrived --

17 Q. When you had that conversation?

18 A. -- back from the restroom there was nobody, hardly.

19 Q. And what happened next?

20 A. That's when we entered the gate to the front and I guess
21 the commotion started in the street. And Santos started
22 telling everybody to go to the back of the house.

23 Q. Let me stop you right there.

24 What -- what kind of commotion did you see?

25 A. Just like a group of people getting together. You know,

1 I like they were going to start trouble or something.

2 Q. Did you see anyone -- how many people were getting into
3 a commotion?

4 A. Well, the -- what I know of is one of 'em, which was
5 Edward Guzman, he was in the middle of people surrounding
6 him, which then he called a friend, which was Licho
7 Escamilla, to come over and help him out, like, you know, get
8 his back.

9 Q. Did you see how many people were -- well, what were they
10 doing in the commotion? And how many people were there?

11 Well, I'll take one question at a time.

12 How many people did you see in a commotion?

13 A. Maybe like 10.

14 Q. And what were they doing?

15 You say they were surrounding somebody?

16 A. Yeah. Yes.

17 Q. And, well, did you hear anything?

18 What did you see?

19 A. No. That's all I seen, was them surrounding him, and
20 then Santos started asking us to go to the back of the
21 house.

22 Q. And where exactly were you standing when you saw this?

23 A. I wasn't even like three feet away, four feet away.

24 They were right by the entrance of the gate and I was on
25 the other side of the gate

1 Q. You were on the inside of the gate?

2 A. Yes, inside of the gate.

3 Q. And so was your back to the house, --

4 A. Yes. Yes.

5 Q. -- you were looking out to the street.

6 Were they in the street?

7 A. Yes.

8 Q. And how close were they to the fence?

9 A. Not -- two feet.

10 Q. And what happened next?

11 A. Santos started asking us to go to the back.

12 And I ran to the back. And it was me, my little sister,
13 Priscilla, Santos right next to her. And I ran to the back,
14 and that's when they started -- I started hearing shooting.

15 Q. Did Priscilla run to the back with you?

16 A. No. She didn't.

17 Q. Okay. Then there was -- what did you hear?

18 A. Well, I was in the back. They started shooting. And,
19 of course, I'm looking for my little sister. And she comes
20 to the back with blood on her shirt. And she -- I'm standing
21 next to Santos' little cousin, little sister.

22 And she tells me, "Santos."

23 And I'm like what's wrong.

24 And she didn't want to tell me, because his little
25 cousin and sister were right next to me and she was like

1 never mind. She ran back to the front and ran back and she
2 was like he's down, you know, he's down.

3 And as soon as everybody left, that's when we ran back
4 to the front and we seen Santos on the floor.

5 Q. Did you see Mr. Alonzo in the front yard when everyone
6 was pushing?

7 A. I didn't see him at all that day.

8 Q. Didn't see him?

9 A. No.

10 Q. And you went to the backyard. How much time passed
11 before your sister ran back to the backyard?

12 A. Not even three minutes.

13 Q. And what was the atmosphere like?

14 A. Everybody was running, trying to get away, hiding.

15 Q. And then what happened when Priscilla came over to you?

16 A. She had told me that Santos had got shot.

17 Q. Okay. And did she tell you anything else?

18 A. Well, she -- she told me that she had seen everything
19 that she was standing right next to Santos.

20 And I asked her, you know, was it who I think it was,
21 which was Licho Escamilla?

22 And she just nodded, said yes.

23 And we just, you know, started crying, because I
24 couldn't believe that.

25 Q. And did you -- why did you -- why did you say is it who

1 I thought it was?

2 A. Because we know how he was. We -- we've been to parties
3 around him and he -- he would start fights and start beating
4 up people that he didn't even know and start shooting and
5 acting crazy.

6 Q. And were you scared of Li cho Escami l l a?

7 A. Yes, I was.

8 Q. And based on your relationship with your sister, I mean,
9 was your sister also scared of him?

10 A. Yes.

11 Q. What did you do after that?

12 Did you talk -- did you go home with your sister or --

13 A. No. We actually got taken to the -- where you get --
14 you know, by the detectives.

15 Q. You went down to the police station?

16 A. Yes.

17 Q. Did you give a statement?

18 A. Yes.

19 Q. Did your -- do you know whether your sister gave a
20 statement?

21 A. No, she didn't.

22 She did, actually, and she just said she didn't see
23 nothing.

24 Q. Did you -- did she tell you that?

25 A. Yes.

1 Q. She told you she didn't say anything?

2 A. Yes.

3 Q. And did you tell her she should tell, she should -- she
4 should say what she saw?

5 A. No. At the time, you know, we were scared, so, you
6 know, I had to give my little sister -- you know, be a big
7 sister, and I told her, well, you know, we know how it was.

8 Q. How old were you at this time?

9 A. 17.

10 Q. And how old was Priscilla?

11 A. 16.

12 Q. Did you tell Priscilla not to say anything?

13 A. If you want, yes, I did. Yeah.

14 Q. And what happened after that?

15 Did you go home?

16 A. Yes. They took me home like around 7:00, 8:00 in the
17 morning.

18 Q. And where did you live at that time? Did you live with
19 anyone?

20 A. Yes. With friends.

21 Q. And -- and what friends did you live with?

22 A. There were four girlfriends.

23 Q. Do you remember their names?

24 A. Yelonda Ramirez and -- I can't remember the other ones.

25 Q. Did you not live with Priscilla?

1 A. No. At the time, no.

2 Q. Where did she live?

3 A. She lived down the street from Santos with my
4 grandmother.

5 Q. Would you see her -- did you see her a lot at that time?

6 A. Yes.

7 Q. Were you close sisters?

8 A. Yes. Very close.

9 Q. What happened after that?

10 You went home and went to sleep?

11 A. No. I was actually crying and down.

12 Q. And did anything happen that morning?

13 A. Yes. 30 minutes from when I got there Licho showed up
14 at the house and --

15 Q. Let me back up real fast.

16 What time did you get home?

17 A. Around 7:00, 7:30.

18 Q. All right. Continue.

19 You said Licho showed up at the house?

20 A. And he looked real scared, real pale. And, of course, I
21 answered the door scared too. And he was looking for his
22 little brother, because his little brother would always come
23 over. And I just said, no, he's not here. And he left.

24 Q. And what was his demeanor like?

25 What was -- what was he -- how did he appear to you?

1 Did he appear to be scared or --

2 A. Yes. He looked real pale, real scared.

3 Q. And anything else stand out to you about did his
4 appearance or -- did he come inside?

5 A. No. It was just the front door.

6 Q. And how long -- how long did you interact with him?

7 A. Not even two minutes.

8 Q. Were you scared when he was at the door?

9 A. Yes.

10 Q. You were?

11 A. I wanted to attack him, but, of course, you know . . .

12 Q. Do you know what he was wearing?

13 A. No. I don't remember.

14 You know what, I think he changed. He went and changed.

15 Q. Did you -- after that do you know -- did your sister
16 remain in Dallas?

17 A. Yes. For a while, yes.

18 Q. And when did she leave?

19 Do you remember when she left?

20 A. I don't really remember.

21 Q. Do you know where she may have gone?

22 A. They had sent her to a boot camp or something in
23 Houston.

24 Q. Did you -- did you write her letters?

25 Did you keep in touch with her?

1 A. No.

2 Q. Did your grandmother know where she lived?

3 A. Yes.

4 Q. And did your grandmother send her to the boot camp?

5 A. Yes.

6 Q. Did she go drive her down there to the boot camp?

7 A. Yes.

8 Q. And when did you see her after that? Just periodically?

9 I mean, did she ever --

10 A. After she -- after she graduated. I don't remember what
11 month, but when she graduated from this boot camp they let
12 her come home.

13 Q. How long do you think she was in -- she was in boot
14 camp?

15 A. I think it was six months.

16 Q. And do you remember -- and you're not sure exactly when
17 she went to boot camp?

18 A. No.

19 Q. Do you remember your sister ever speaking to the police
20 again?

21 A. Yes. Yes.

22 Q. And I -- I don't -- I need -- I need to rewind a little
23 bit.

24 Prior to her going off to boot camp.

25 What do you remember exactly?

1 A. I remember getting home and she was speaking to the
2 detective that was investigating all this, I guess.

3 Q. Well, what did the detective look like?

4 A. He was short, with white hair, and old.

5 Q. And where were they speaking?

6 A. Outside in front of the house.

7 Q. And where were you?

8 A. I was coming home. I was going to my grandmothers.

9 Q. Did you go and talk to the detective or did you --

10 A. No. I just passed by them while they were talking.

11 Q. Where -- where were they talking exactly?

12 A. In front of my grandma's house, outside, on the porch.

13 Q. And did you just go inside?

14 A. Yes.

15 Q. And what did you find out -- did you -- did you watch
16 them talk through a window or did you just go do your own
17 thing?

18 A. Yes.

19 Q. Which -- I'm sorry --

20 A. Oh, I just went in and did my thing.

21 Q. Okay. Did you speak to your sister after the detective
22 left?

23 A. Yes. And I asked her what was going on. And she told
24 me she was finally going to tell the truth, which she had
25 did, told him what she seen.

1 Q. Had you spoken to her about that before, about coming
2 forward and telling the truth?

3 A. We thought about it, yes.

4 Q. Did you have any idea that she wanted to do that before
5 she spoke with the detective?

6 A. No.

7 Q. And what did she say after that?

8 Did she -- did the detective appear to take that --
9 bring her down for more questioning or --

10 A. I would think. I would think they would have, because I
11 was kind of waiting for them to do something about it, but
12 nothing ever happened. And I would think they would take
13 something like that seriously.

14 Q. And did your -- did you, the night after the shooting,
15 ever encounter Li cho Escami lla's brother?

16 A. Yes. He actually showed up the next day, around 3:00,
17 4:00 o'clock in the afternoon.

18 Q. So you had gotten home about 6:00 or 7:00. And then
19 Li cho showed up.

20 And then what -- and do you mean that day, 3:00 or 4:00
21 in the afternoon on that day?

22 A. Yes.

23 Q. And what were you doing at the time?

24 A. I was laying down in bed.

25 Q. And what happened?

1 A. His brother came in and started yelling out that they
2 were shooting at people --

3 MS. KUYKENDALL: Your Honor, I'm going to object as
4 hearsay.

5 THE COURT: Response?

6 MR. BIGGS: Your Honor, this goes to actual
7 innocence and, you know, based on the Supreme Court in Schlup
8 v. Delo anything goes. And, you know, the court can accord
9 it whatever weight it -- it chooses to, but the rules of
10 hearsay or admissibility at trial don't apply in determining
11 whether my client is actually innocent of this crime for the
12 fundamental miscarriage of justice exception, and the court
13 can afford it whatever weight it chooses.

14 MS. KUYKENDALL: Your Honor, hearsay may be
15 admissible in a -- on an actual innocence claim, but at the
16 same time it must be reliable and credible and we would argue
17 that it's neither.

18 THE COURT: You can go into that on
19 cross-examination.

20 Ms. Rodriguez, I do need you to speak up a little bit
21 more though.

22 THE WITNESS: Okay.

23 BY MR. BIGGS:

24 Q. Okay. And what -- what do you remember?

25 What did -- what did he say?

1 A. Well, he came in saying that they were shooting and that
2 they -- his brother had killed somebody last night, which was
3 the next day.

4 And I had a friend there, whose name was Raphael
5 (phonetic), who started telling him to leave, because Santos
6 was his cousin.

7 And he took it, you know, bad, and he left.

8 Q. Who all -- let me back you up.

9 Who was at the house at that time?

10 A. It was just me, my friend Raphael and my friend Yoli
11 (phonetic).

12 Q. And was Yoli your roommate?

13 A. Yes.

14 Q. And who was Raphael?

15 Was that a good friend of yours?

16 A. Yes.

17 Q. Was Raphie friends with Santos?

18 A. He was his cousin.

19 Q. Okay. I'm sorry. You've said that.

20 And -- and were you friends with -- which -- which
21 brother is this?

22 Is this Juan Escamilla?

23 A. Yes.

24 Q. Were you friends with Juan at the time?

25 A. Yes.

1 Q. Did you continue to be friends with Juan after that?

2 A. No. No.

3 Q. Did you ever -- did you just stop talking to him?

4 A. Yes, I did.

5 Q. Did you ever start talking to him again?

6 A. We did, actually. I can't remember how long from the
7 time, but we would always get together, and one day we did.
8 And he was actually asking all of us for forgiveness for what
9 he did and that he didn't know that it was -- that that was a
10 friend of ours.

11 Q. And when you say "what he did," what do you mean?

12 A. Which was they were shooting and his brother killed my
13 friend.

14 Q. Well, did -- was it your understanding that Juan was
15 also shooting?

16 A. Yes.

17 Q. Was he apologizing for (sic) you for also shooting?

18 A. Yes.

19 Q. Do you know Michael Torres?

20 A. Yes, I do.

21 Q. And how -- how do you -- how did you know him?

22 A. We grew up together, too.

23 Q. Were you close friends with him?

24 A. Yes.

25 Q. Do you -- did you -- was Michael Torres at the party

1 that night?

2 A. No. No.

3 Q. And I know there -- did you -- did you interact with
4 Michael Torres at all after this incident?

5 A. No.

6 Q. And when did you find out that he had been shot?

7 A. Like a couple of days after. A day. A day after.

8 Q. How -- how did you find out?

9 A. I was actually living down the street from where he was
10 at, and they had told me that Licho Escamilla killed him
11 because he was trying to -- I guess, you know, that he killed
12 his cousin and he tried to confront him about it.

13 MS. KUYKENDALL: Your Honor, I'm sorry. Object on
14 relevance grounds. I mean, whatever Michael Torres may have
15 thought about who killed his cousin is not relevant to
16 whether -- to whether Licho Escamilla actually killed his
17 cousin.

18 THE COURT: I'm having trouble hearing you.

19 MS. KUYKENDALL: I'm sorry.

20 Whatever -- whatever Michael Torres' reasons for or
21 grudge against Licho Escamilla, his belief as to what Licho
22 may or may not have done is not relevant to whether Licho
23 actually did that and whether -- and not relevant to the
24 actual innocence claim.

25 THE COURT: Mr. Biggs.

1 MR. BIGGS: Your Honor, I believe that she -- when
2 she came to learn about this shooting that she did learn some
3 information that might pertain to his actual innocence claim,
4 and I -- I -- I agree that while what he thought had
5 occurred -- what Michael Torres thought had occurred might
6 not be what in fact occurred, the fact remains that she has I
7 believe some information regarding Licho Escamilla's state of
8 mind when he shot Michael Torres.

9 THE COURT: Now I'm confused.

10 MR. BIGGS: I got --

11 THE COURT: Who shot who?

12 MR. BIGGS: I got confused myself.

13 THE COURT: We're on a different shooting now?

14 MR. BIGGS: Yes, we are. We are on a different
15 shooting.

16 And, basically, this -- this was an issue that was
17 raised at trial but it was excluded from evidence. And
18 the -- it appears to be undisputed that Licho Escamilla
19 killed Michael Torres, who is Santos Gauna's cousin. And at
20 trial it was elicited that it appeared that Michael Torres
21 had -- was seeking to avenge his cousin's death and was going
22 after Mr. Escamilla, and Mr. Escamilla did in fact shoot him.
23 And it was excluded on the basis that we don't know what
24 exactly Mr. Escamilla -- you know, just because he might have
25 shot him for what Michael Torres thought had happened doesn't

1 mean that it actually did happen.

2 THE COURT: So what does that have to do with Mr.
3 Alonzo's actual innocence claim?

4 MR. BIGGS: Well, I believe that there were some
5 statements made to her that suggest that he had actually in
6 fact shot Santos as well and that that could be elicited by
7 her learning about this murder as well.

8 THE COURT: Well, let's -- let's get to those
9 statements.

10 MR. BIGGS: Well, I -- I was trying to.

11 THE COURT: Well, let's just go ahead.

12 I can sort this out, we don't have a jury here, but
13 let's try to focus on Mr. Alonzo's claim.

14 BY MR. BIGGS:

15 Q. Okay. Who -- who told you -- who told you about Michael
16 Torres being killed?

17 A. A friend of mine.

18 Q. Who is a friend of yours?

19 A. A couple of friends that were there with them. I don't
20 remember their names. But I knew them, 'cause this was a
21 dope house, you want to call it, everybody knew who they
22 were.

23 Q. And did you ever hear anything from Juan Escamilla or
24 Licho Escamilla about that -- that killing?

25 A. No.

1 Q. Okay. And I have one more question.

2 The night of the shooting did you -- this is of Santos
3 Gauna, did you see Mr. Escamilla, Li cho Escamilla, carrying a
4 gun?

5 A. No.

6 Q. You did not see him?

7 A. No.

8 Q. Did you -- did you see him?

9 Did you see him that night?

10 A. Yes.

11 Q. Prior to the shooting?

12 A. Yes.

13 Q. And can you describe what he was wearing?

14 A. I don't -- I don't really remember, but I know he was
15 wearing a baseball hat.

16 Q. Did you see him arrive in a car or did he walk or --

17 A. They were actually -- it was him and friends. They were
18 in a Cadillac. I can't remember, it was black or green or --
19 I know it was dark colored. And then his friends in a
20 Suburban, green and white Suburban.

21 Q. And how many people did he arrive with?

22 A. Maybe -- there was maybe like eight of 'em.

23 MR. BIGGS: Pass the witness.

24 THE COURT: Ms. Kuykendall.

25 CROSS EXAMINATION

1 BY MS. KUYKENDALL:

2 Q. Ms. Rodriguez, all right, I just wanted to clarify.

3 Now, when you spoke to police right after the shooting
4 occurred, you told them that you didn't see the shooting; is
5 that correct?

6 A. Yes.

7 Q. Okay. And is that what you're maintaining today, that
8 you didn't -- you didn't see the shooting?

9 You're not telling us that you saw the shooting?

10 A. Um-hum.

11 Q. Okay. So you have no personal knowledge of who shot
12 Santos?

13 A. Just by my little sister.

14 Q. Okay. So what she -- I'm sorry. Go ahead.

15 A. Yes, because she was right next to Santos.

16 Q. But you didn't --

17 A. No.

18 Q. So your opinion on who shot Santos is all -- all comes
19 from what your sister allegedly told you?

20 A. Yes.

21 Q. Okay. So -- all right. And so if you can take me
22 through the timeline again. And I'm sorry if I didn't catch
23 this the first time, but -- so after the shooting -- you
24 came -- you came home -- that was the day after the shooting,
25 you came home and you got -- you got home around 6:00 or 7:00

1 in the morning; is that right?

2 A. Yes.

3 Q. Okay. And then was it that evening that Li cho came to
4 see you or was it --

5 A. No.

6 Q. -- what time?

7 A. That same time, 30 minutes after I left --

8 Q. Okay. 30 minutes. Okay.

9 I'm very sorry. I'm talking over you.

10 So about 30 minutes after you got home Li cho showed up
11 at your door?

12 A. Yes.

13 Q. Okay. And you said that he looked pale, or -- or --
14 now, tell me again. He looked you said sort of pale or
15 shaky?

16 A. Yes.

17 Q. That kind of thing.

18 So scared I think was a word --

19 A. Scared, yes.

20 Q. -- that you used.

21 But you were scared of Li cho?

22 A. Yes.

23 Q. Okay. Why -- he doesn't sound so scary from what you're
24 saying.

25 He's -- he's the one who's scared. Why were you scared

1 of him?

2 A. Just the thought of him, you know, the way he was. He's
3 always been bad. He was real cold-hearted. He didn't -- I
4 kind of wanted to tell him, you know, why'd you shoot my
5 friend, and I was scared, of course, that he would have
6 probably shot me right there, too.

7 Q. Okay. Was he carrying a gun?

8 A. Not at that time, no.

9 Q. Okay. You didn't -- he didn't threaten you; is that
10 correct?

11 A. Um-hum.

12 Q. Okay. So he didn't threaten you.

13 He looked scared.

14 A. Yes.

15 Q. Okay. No gun.

16 All right. And so you said that your sister went to TYC
17 for about six months?

18 A. No. It was just a boot camp.

19 Q. I'm sorry. I misspoke. A boot camp for about six
20 months.

21 A. Yes.

22 Q. And you say that you were close to your sister.

23 A. Yes.

24 Q. Okay. And because of that closeness, that caused her
25 you say to confide in you what she saw the night of the

1 party.

2 A. Yes.

3 Q. Okay. But you didn't write to her when she was away.

4 A. No.

5 Q. But I thought you were close to her?

6 A. Yeah, I was, but at the time I was, you know, in my own
7 world and she was trying to get her life straight.

8 Q. Okay. So Licho's brother, Juan, showed up a little
9 later that day; is that right?

10 I'm sorry, taking you back.

11 A. Yes.

12 Q. Okay. Did he threaten you?

13 A. No.

14 Q. Okay. Were you scared of him?

15 A. No.

16 Q. Okay. All right. So Licho didn't threaten you?

17 A. No.

18 Q. Okay. Juan didn't threaten you?

19 A. No.

20 Q. But -- and they didn't threaten Priscilla either?

21 A. I wouldn't say they would -- they didn't. Because --
22 because there -- there was a time that my little sister had
23 told me that he went to the house and told -- Licho Escamilla
24 told her, I know you seen me, I know what you seen. And my
25 little sister --

1 MS. KUYKENDALL: Your Honor, I object on hearsay
2 grounds.

3 I'm sorry.

4 THE COURT: Overruled.

5 BY MS. KUYKENDALL:

6 Q. So do you know when this was?

7 A. This was maybe two months maybe after Santos's shooting.

8 Q. Okay.

9 MS. KUYKENDALL: May I have a moment, Your Honor?

10 THE COURT: You may.

11 MS. KUYKENDALL: Your Honor, I'll pass the witness.

12 THE COURT: Mr. Biggs. If you have any questions.

13 I didn't mean that you had to question her.

14 Do you have any redirect?

15 MR. BIGGS: Briefly.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MR. BIGGS:

19 Q. You testified that you were scared of Mr. Escamilla?

20 A. Yes.

21 Q. And did you -- did Mr. Escamilla threaten your sister?

22 A. I would say yes.

23 Q. What happened exactly?

24 A. They showed up at my grandmother's house with a stolen
25 car, which was Licho Escamilla and a friend of his, Michael.

1 And my little sister and my big sister went out there, which
2 is Vanessa and Priscilla Rodriguez.

3 And my little sister told -- recalled a moment that they
4 were in the front seat of the stolen car and that Licho had
5 told her I know you seen me, I know what you seen.

6 And -- and my little sister told me she was scared to
7 death, she didn't know what to say, so she just told him, you
8 know, I don't know what you're talking about, I don't know
9 what -- and she got out of the car.

10 Q. Is your -- is your sister still scared of Licho
11 Escamilla?

12 A. I don't know. I don't know.

13 MR. BIGGS: No further questions.

14 THE COURT: Any redirect -- recross?

15 MS. KUYKENDALL: I have a brief.

16 RECROSS EXAMINATION

17 BY MS. KUYKENDALL:

18 Q. The event that you just spoke about when Licho came to
19 the house in the stolen car --

20 A. Yes.

21 Q. -- was this -- was this before or after Priscilla gave
22 her second statement to the police?

23 A. I'm thinking this was before.

24 Q. This was before?

25 And yet she still gave that statement to the police?

1 A. She never mentioned his name. She just pointed him out
2 in a picture.

3 Q. If your sister was scared of Li cho, why would she,
4 herself, and take your other sister, why would they go out to
5 the car when they showed up?

6 A. One of my -- well, actually, she didn't even know he was
7 in the car. Michael, which was a friend that was with him,
8 was dating my sister.

9 Q. Okay. So you're -- you're surmising that she actually
10 went out there not realizing that Li cho was there?

11 A. Yes.

12 Q. And so she also couldn't see that he was in the car and
13 so got in the car with Li cho?

14 A. I guess so. Yeah.

15 Q. Okay. All right.

16 MS. KUYKENDALL: No further -- well, I pass the
17 witness.

18 MR. BIGGS: Nothing further, Your Honor.

19 THE COURT: Can this witness be excused?

20 MR. BIGGS: Yes, Your Honor.

21 MS. KUYKENDALL: Yes, Your Honor.

22 THE COURT: All right. Ms. Rodriguez, thank you
23 very much.

24 You are free to leave.

25 You may call your next witness.

1 MR. BIGGS: May I have just one moment to confer
2 with my client?

3 THE COURT: Why don't we take a short ten minute
4 break while you confer with your client.

5 MS. KUYKENDALL: Your Honor, if I may make a
6 suggestion.

7 If Mr. Alonzo decides to testify I think that we may
8 need to re-call Mr. Hays, and if we -- if we take maybe
9 another break so that we could go ahead and call Mr. Hays
10 after they have made their decision.

11 I don't know if you want to break now and take another
12 break. I'm sorry.

13 THE COURT: Well, I -- I assume you need a few
14 minutes to talk to your client, Mr. Biggs?

15 MR. BIGGS: Yes, Your Honor.

16 THE COURT: I hate to sit here and watch them
17 confer when everyone else could take a break and then we'll
18 know if we need another break.

19 All right. We'll be in recess.

20 (Recess taken at 3:35.)

21 (Proceedings resumed at 3:48.)

22 THE SECURITY OFFICER: All rise.

23 THE COURT: Please be seated.

24 All right. Mr. Biggs, do we have another witness?

25 MR. BIGGS: Your Honor, the petitioner rests.

1 THE COURT: All right.

2 MR. MEADOR: Respondent rests.

3 THE COURT: All right. Would the parties like to
4 make closing statements?

5 MR. MEADOR: I don't have any closing.

6 Well, you go first.

7 MR. BIGGS: Your Honor, I would like to move for
8 leave to file a brief in light of the evidentiary hearing, if
9 possible.

10 THE COURT: All right. How much time do you need
11 to file your brief?

12 MR. BIGGS: Two weeks. A week, two weeks.

13 THE COURT: All right. Mr. Meador.

14 MR. MEADOR: If we could do a two week/two week
15 sort of thing.

16 THE COURT: All right. 14 days/14 days for
17 response. Do you want to reply?

18 MR. BIGGS: Yes.

19 THE COURT: All right. 14/14 and 10.

20 I will issue an order to that effect.

21 Is there anything else that we need to address?

22 MR. BIGGS: I'll defer all my arguments, Your
23 Honor, to the briefing.

24 THE COURT: All right. Mr. Meador, anything else
25 that we need to address?

1 MR. MEADOR: Just --

2 THE COURT: All right.

3 MR. MEADOR: No.

4 THE COURT: Let me just remind you that you have no
5 copies of the exhibits, so to the extent that you want them
6 considered you should attach them to your briefs.

7 I have as admitted Petitioner's 1, 4, 2, 5, 6, 7, 10,
8 11, 12, and 13, anyone have anything different as far as
9 petitioner's exhibits?

10 And I take it the parties will be jointly ordering the
11 transcript and citing to the transcript with your
12 supplemental briefing?

13 MR. BIGGS: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. MEADOR: Your Honor, can I ask, how long will
16 it take to transcribe the hearing?

17 THE COURT: This is the lady you need to ask right
18 here (indicating).

19 MR. MEADOR: Won't that impact the briefing
20 schedule?

21 THE COURT: How about 14 days after the transcript
22 is filed?

23 MR. MEADOR: Thank you.

24 THE COURT: All right. For respondents I have 3,
25 4, and 5.

1 MR. MEADOR: That's right.

2 THE COURT: All right. Thank you very much.

3 We are adjourned.

4 THE SECURITY OFFICER: All rise.

5 (Proceedings ended at 3:50.)

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C E R T I F I C A T I O N

I, PAMELA J. WILSON, CSR, certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

This the 15th day of April, 2010.

s/Pamela J. Wilson
PAMELA J. WILSON, RMR, CRR
Official Court Reporter
The Northern District of Texas
Dallas Division